

<p>1 Dawley 101</p> <p>2 changes with regard to the Logan account</p> <p>3 alone?</p> <p>4 MR. TRAUB: Objection to the</p> <p>5 form.</p> <p>6 Q Only \$370.00.00 of which had to do</p> <p>7 with appreciation or depreciation.</p> <p>8 On the basis of what was Marks,</p> <p>9 Paneth &amp; Shron making those other journal</p> <p>10 entry adjustments?</p> <p>11 MR. KELLY: Objection.</p> <p>12 MR. TRAUB: Objection to the</p> <p>13 form.</p> <p>14 Improper use. They weren't</p> <p>15 journal entries. Even your</p> <p>16 accountant told you earlier.</p> <p>17 MR. HAYWOODE: Now, you're</p> <p>18 testifying.</p> <p>19 You object to the form and</p> <p>20 your reason for it.</p> <p>21 MR. KELLY: I join in that</p> <p>22 objection.</p> <p>23 Q There were adjustments being</p> <p>24 suggested by Marks, Paneth &amp; Shron, right?</p> <p>25 A Yes.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 103</p> <p>2 cash to accrual.</p> <p>3 Q You're saying all of those, if</p> <p>4 there are sixty-one, their adjustments are the</p> <p>5 result of the change from cash to accrual and</p> <p>6 no one of them is just a blanket change in</p> <p>7 figures in number?</p> <p>8 A I don't remember.</p> <p>9 I didn't memorize them all, but</p> <p>10 there may have been a reclassification from</p> <p>11 like an expense account to a capital account,</p> <p>12 so that you would depreciate it rather than</p> <p>13 expense it during the current year. I think</p> <p>14 that has transpired.</p> <p>15 Q Now, getting back to this request.</p> <p>16 A Yes.</p> <p>17 Q You say these were not questions</p> <p>18 that Dalton could answer.</p> <p>19 With regard to those that they are</p> <p>20 concerning, and you pointed to some of them</p> <p>21 that Dalton couldn't answer, is that correct?</p> <p>22 A I think we went through which</p> <p>23 ones.</p> <p>24 Q Yes, you did. I am not going to</p> <p>25 do that again.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 102</p> <p>2 Q There were sixty-one of them is</p> <p>3 that, correct? We just counted up</p> <p>4 approximately.</p> <p>5 A I don't know how many there were.</p> <p>6 Q You didn't add them, but assuming</p> <p>7 that we add the numbers I am coming to</p> <p>8 sixty-one. Maybe there is one or two less or</p> <p>9 more or whatever.</p> <p>10 Isn't that an excessive amount of</p> <p>11 journal entries?</p> <p>12 MR. TRAUB: Again objection</p> <p>13 to the misuse of the term journal</p> <p>14 entry.</p> <p>15 Q Journal entry, suggestion for</p> <p>16 adjustments.</p> <p>17 MR. TRAUB: Again same</p> <p>18 objection.</p> <p>19 Q Isn't that a lot of suggestions to</p> <p>20 the accountant that make these changes, isn't</p> <p>21 that lot of them?</p> <p>22 A I don't think so.</p> <p>23 Q In your experience that is not</p> <p>24 excessive?</p> <p>25 A Not when you change the books from</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 104</p> <p>2 But you have no recollection of</p> <p>3 receiving that, is that correct?</p> <p>4 A No, I don't remember.</p> <p>5 MR. HAYWOODE: Now, I am</p> <p>6 going to show you Exhibit 2 from</p> <p>7 the deposition of February 3,</p> <p>8 2008, which we will mark today as</p> <p>9 Plaintiff's Exhibit 4.</p> <p>10 (A response to questions</p> <p>11 posed in Exhibit 3 was</p> <p>12 marked as Plaintiff's</p> <p>13 Exhibit 4, for</p> <p>14 identification, as of this</p> <p>15 date.)</p> <p>16 A Okay.</p> <p>17 Q Is that a response to the</p> <p>18 questions that were posed in Exhibit 3?</p> <p>19 A It appears to be, yes.</p> <p>20 Q Now, the question was posed on</p> <p>21 what day, May 10, 2007?</p> <p>22 A That's Exhibit 3, yes.</p> <p>23 Q Do you recall whether or not that</p> <p>24 was a Thursday?</p> <p>25 A (No verbal response.)</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

1 Dawley 105

2 Q You don't recall?

3 A No.

4 Q If I suggest to you that was a Thursday, is it reasonable to presume that Dalton would receive that response on Friday on the 11th?

8 MR. TRAUB: Objection to form.

10 Did he receive the Exhibit?

11 Q It is reasonable to presume that Dalton, would have received that request made to it at least on the 11th?

14 MR. TRAUB: You're talking about Exhibit 3?

16 MR. HAYWOODE: Yes.

17 A I don't know when I got it. Could have been the next day, could have been the day after. It depends whether Neale was in or not because it was addressed to her.

21 Q On a Saturday or Sunday?

22 A She is not there a lot of times on Friday, so I don't know.

24 Q But the answer was produced on the 25 15th, is that correct?

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Dawley 106

2 A Yes, it was. That's the date on the Exhibit 4.

4 Q If the 11th was a Thursday then the 15th would have been Monday, is that correct?

7 A I think that's right.

8 Q The request from Cameron, Pryce & Griffiths was to Dalton originally, correct?

10 A Correct, right.

11 Q It would appear that the request was immediately sent to Marks, Paneth & Shron for response, is that correct?

14 MR. TRAUB: Objection.

15 A I don't know.

16 Q Well, the response came from Marks, Paneth & Shron, is that correct?

18 A Yes.

19 Q So is it reasonable to presume that whoever got it at Dalton said give it to Marks, Paneth & Shron?

22 MR. TRAUB: Objection to form.

24 A They could have. I don't --

25 Q You have no idea?

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Dawley 107

2 A No.

3 Q Do you have any idea who would have an idea?

5 A No.

6 Q With the exception of the loan documents?

8 A Right.

9 Q Is this information that the accountant should have had?

11 A You mean Marks, Paneth & Shron?

12 Q Who is the accountant?

13 A Well, I don't understand what you're asking.

15 Q Isn't that Dalton's accountant?

16 A Dalton is the property managing agent, yes.

18 Q Are they the accountant for this account?

20 A They take care of books and records, yes.

22 Q They are the accountant?

23 A Right.

24 Q Their work is reviewed by an auditor?

25

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Dawley 108

2 A Yes.

3 Q Marks, Paneth & Shron is the auditor?

5 A Yes.

6 Q The auditor sent in a team of maybe fourteen people every now and then, they look at your books and records and they make suggestions based on their inquired investigation to you as to journal adjustments, is that correct?

12 A Yes.

13 Q Then as I understand the process, but correct me I am not an accountant, you get to talk to the auditor and say, "Well, we agree with this and this and this and this, but not that," but basically this is the accountant's work. The auditor is only making commentary and suggesting changes, is that correct?

21 A Yes.

22 Q In the keeping of these accounts, is it not the case that it is the primary accountant here, Dalton, who's supposed to have all these back up material that Cameron,

25

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<p>1 Dawley 109</p> <p>2 Pryce &amp; Griffiths is talking about, isn't that</p> <p>3 correct?</p> <p>4 MR. TRAUB: Objection to the</p> <p>5 form.</p> <p>6 <b>A You say we are supposed to have?</b></p> <p>7 <b>Q</b> I don't know. I am not an</p> <p>8 accountant, sir. You tell me.</p> <p>9 <b>A No, that was your question.</b></p> <p>10 <b>Q</b> Well, my question is isn't the</p> <p>11 accountant supposed to have it?</p> <p>12 <b>A We can have -- we have some of the</b></p> <p>13 <b>other information, but I don't know if we have</b></p> <p>14 <b>all of the information. I know we do have</b></p> <p>15 <b>copies of all their work papers.</b></p> <p>16 <b>Q</b> Let me ask you this, why would the</p> <p>17 auditor, have any of the papers which are the</p> <p>18 form and fabric of the affairs of Dalton</p> <p>19 Management? Why would the auditor, who comes</p> <p>20 in merely to look at it and make suggestions,</p> <p>21 why would they have any of the papers?</p> <p>22 <b>A The auditor has to have support in</b></p> <p>23 <b>their work papers in order to justify the</b></p> <p>24 <b>balances that they report on the financial</b></p> <p>25 <b>statements. So they are going to have support</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 111</p> <p>2 <b>adjustment to convert the accounting</b></p> <p>3 <b>information from cash to accrual in order to</b></p> <p>4 <b>produce the financial statement.</b></p> <p>5 <b>Q</b> But they were just asking for</p> <p>6 documentation then in the communication of May</p> <p>7 10th, isn't that so?</p> <p>8 <b>A Okay.</b></p> <p>9 <b>Q</b> They are asking for documentation?</p> <p>10 <b>A They asked for the finalized</b></p> <p>11 <b>figure.</b></p> <p>12 <b>For example, Number 5 for accounts</b></p> <p>13 <b>payable that was used in the audited financial</b></p> <p>14 <b>statement, we don't maintain our books on an</b></p> <p>15 <b>accrual basis so we don't have the back up for</b></p> <p>16 <b>that specific number broken out the same way</b></p> <p>17 <b>as they do, because they put it on an accrual</b></p> <p>18 <b>basis. We are on a cash basis. That at the</b></p> <p>19 <b>end of the year what they have on accounts</b></p> <p>20 <b>payable is never going to agree with what we</b></p> <p>21 <b>have, because they have to make adjustments to</b></p> <p>22 <b>it to pick up expenses that came in after the</b></p> <p>23 <b>end of the year in January that were for</b></p> <p>24 <b>December. They have to be added back in as an</b></p> <p>25 <b>expense in December and that's included in the</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 110</p> <p>2 <b>in their work papers for all the different</b></p> <p>3 <b>entries -- I mean all the different balances.</b></p> <p>4 <b>They have to have that.</b></p> <p>5 <b>Q</b> Where do they get that supporting</p> <p>6 documentation?</p> <p>7 <b>A From us.</b></p> <p>8 <b>Q</b> Which means that you don't just</p> <p>9 take your records and give it to them</p> <p>10 wholesale, do you? I mean you make copies and</p> <p>11 supply them to them, right?</p> <p>12 <b>A Auditors come into the office and</b></p> <p>13 <b>they review our books and records. We make</b></p> <p>14 <b>copies of whatever they need, they put it into</b></p> <p>15 <b>their work paper, finalize it and produce the</b></p> <p>16 <b>audited financial statement.</b></p> <p>17 <b>Q</b> But the originals of the</p> <p>18 documentation are still with Dalton, is that</p> <p>19 correct?</p> <p>20 <b>A That's correct.</b></p> <p>21 <b>Q</b> That being so why would the</p> <p>22 request from Cameron, Pryce &amp; Griffiths of May</p> <p>23 10th have been almost immediately sent to</p> <p>24 Marks, Paneth &amp; Shron?</p> <p>25 <b>A Because they had the adjustment,</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 112</p> <p>2 <b>accounts payable.</b></p> <p>3 <b>Q</b> Again getting back to my previous</p> <p>4 question to you, you would never know what was</p> <p>5 going on financially by simply looking at</p> <p>6 Dalton's books, is that correct?</p> <p>7 MR. TRAUB: Objection to the</p> <p>8 form.</p> <p>9 MR. KELLY: Objection to the</p> <p>10 form.</p> <p>11 <b>A If you're familiar with the</b></p> <p>12 <b>accounting method of cash and accrual, you</b></p> <p>13 <b>should be able to as an educated accountant to</b></p> <p>14 <b>determine how it was adjusted from cash to</b></p> <p>15 <b>accrual.</b></p> <p>16 <b>Q</b> So that you don't understand the</p> <p>17 request of May 10th, made by Cameron, Pryce &amp;</p> <p>18 Griffiths, to be a request for document to</p> <p>19 support things?</p> <p>20 MR. TRAUB: Objection to</p> <p>21 form.</p> <p>22 <b>Q</b> You say that they are asking for a</p> <p>23 finalized number in that request?</p> <p>24 <b>A What they are asking for is a</b></p> <p>25 <b>list. For example, Number 5 accounts payable,</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>

1 Dawley 113

2 that would be a list of expenses that are not

3 paid at the end of the year. They asked for

4 the specific expenses that made up that

5 number. Our books are on a cash basis not

6 accrual. That's accrual adjustments. So

7 Marks, Paneth & Shron in their work papers

8 would have a sheet for that particular account

9 that would also for their review people to

10 determine if what the amount was and that it

11 was, you know, produced on the financial

12 statement.

13 Q But they got all the documentation

14 from you, from Dalton?

15 A They got all the information of

16 checks that we wrote and the invoices that

17 came in. After the end of the year we gave

18 those to them, so it could be converted to

19 accrual.

20 Q You maintain copies of them?

21 A We maintain the originals.

22 Q So the information that Cameron,

23 Pryce & Griffiths asked you for it was in

24 Dalton's files, is that correct?

25 A It was there for their review and

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Dawley 114

2 they can go through and they could look it up.

3 If they were doing an audit then they would be

4 produced. They should be doing the same

5 function that Marks, Paneth & Shron did by

6 looking at expenses that were paid for after

7 the end of the year that should have been

8 accrued and if they went through that they

9 would have found those same documents. They

10 would have made the same determination and

11 could have come up with the same figure.

12 Q Why did you, Dalton, refer them to

13 Marks, Paneth & Shron to see documents that

14 were in position of the Dalton?

15 A I was trying to cut the amount of

16 time down, they were going to have to spend to

17 find the same information.

18 Q You were anticipating that they

19 wanted information as opposed to the specifics

20 of what they were asking you for, is that

21 correct?

22 A I don't understand that.

23 Q You said, "Hey look, it will save

24 them time to go get this from Marks, Paneth &

25 Shron, is that correct?

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1 Dawley 115

2 A They want a specific figure that

3 will tie in with the financial statement.

4 Marks, Paneth & Shron has a work paper on that

5 particular account, that will show exactly

6 what the amount was which will tie in exactly

7 with the financial at the same time.

8 Q They would never find that

9 information from simply talking to Dalton?

10 A Not by talking to us. They would

11 have to go through and review all the checks

12 that were written after the end of the year,

13 look at all the invoices and determine whether

14 those invoices were for expenses incurred

15 prior to the end of the year and then they

16 would have to put them on accrual.

17 Q If I said to you William Jennings

18 was of the opinion that Dalton could have

19 responded to that request, would you disagree

20 with that statement?

21 A We could have, but it would have

22 taken quite some time.

23 Q Now, in the course of the

24 inquiries made by Cameron, Pryce & Griffiths,

25 did anyone say to them at some point that,

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1 Dawley 116

2 "Look, you have to get this information from

3 Marks, Paneth & Shron, the auditor and you're

4 going to have to pay them for their time," did

5 anyone say that to them?

6 MR. TRAUB: Objection to

7 form.

8 Q To your knowledge, did anyone say

9 that to them?

10 A I didn't say that to them.

11 Q Do you know if anyone else said

12 that to them?

13 A I don't know.

14 Q Are you knowledgeable if a letter

15 was sent to them saying that?

16 A No.

17 Q Did you read the pleadings in this

18 case at all before coming here today?

19 A No.

20 Q You didn't?

21 A No.

22 Q It did not come to your attention

23 that a communication was sent by Cameron,

24 Pryce & Griffiths in or around November,

25 indicating that someone at Dalton had told

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<p>1 Dawley 117</p> <p>2 them that to get this information they had to</p> <p>3 go to Marks, Paneth &amp; Shron and that they</p> <p>4 would have to pay Marks, Paneth &amp; Shron, that</p> <p>5 never came to your information or attention?</p> <p>6 MR. TRAUB: Objection to the</p> <p>7 form.</p> <p>8 <b>A The information that they</b></p> <p>9 <b>requested, specifically the balance on</b></p> <p>10 <b>accounts payable, would be easily obtained</b></p> <p>11 <b>from Marks, Paneth &amp; Shron's work papers or</b></p> <p>12 <b>that they requested to be compensated for</b></p> <p>13 <b>that, I don't remember whether they requested</b></p> <p>14 <b>to be compensated for that. I don't remember.</b></p> <p>15 <b>Q Did anyone from Dalton tell</b></p> <p>16 <b>Cameron, Pryce &amp; Griffiths you have to pay to</b></p> <p>17 <b>get that from them?</b></p> <p>18 <b>A I don't remember.</b></p> <p>19 <b>Q Who were the persons who dealt</b></p> <p>20 <b>with Cameron Pryce and Griffiths aside from</b></p> <p>21 <b>yourself at Dalton?</b></p> <p>22 <b>A The accounts payable Veronica</b></p> <p>23 <b>Mackenzie. I think Alonzo Rodgers provided</b></p> <p>24 <b>them with some information. I believe I asked</b></p> <p>25 <b>Joan Mondesir to come up with some compliance</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 119</p> <p>2 <b>from the work paper that Marks, Paneth &amp; Shron</b></p> <p>3 <b>would have produced then trying to go back</b></p> <p>4 <b>through and pull out all of the invoices that</b></p> <p>5 <b>were there. In a proper audit, if you were</b></p> <p>6 <b>doing an audit, you wouldn't look to an</b></p> <p>7 <b>auditor's work papers. You would do your own</b></p> <p>8 <b>investigation, make your own determination and</b></p> <p>9 <b>looking through the invoices that were readily</b></p> <p>10 <b>available and determine whether or not that</b></p> <p>11 <b>figure was correct.</b></p> <p>12 <b>Q When you say you, are you</b></p> <p>13 <b>referring to --</b></p> <p>14 <b>A I am referring to Cameron, Pryce &amp;</b></p> <p>15 <b>Griffiths.</b></p> <p>16 <b>Q That they should have looked at</b></p> <p>17 <b>the auditor's papers?</b></p> <p>18 <b>A They had all the information</b></p> <p>19 <b>available. If they wanted to determine what</b></p> <p>20 <b>the accounts payable, in their opinion, should</b></p> <p>21 <b>be at the end of the year they could very</b></p> <p>22 <b>easily have gone through all the invoices that</b></p> <p>23 <b>were there and made a calculation of which</b></p> <p>24 <b>ones were appropriate to be classified as a</b></p> <p>25 <b>payable at the end of the year and then if</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 118</p> <p>2 <b>issues and I think we had a -- we had a rent</b></p> <p>3 <b>increase that she had.</b></p> <p>4 <b>Q Would any of those persons have</b></p> <p>5 <b>had the authority to say to the auditors, that</b></p> <p>6 <b>you have to pay Marks, Paneth &amp; Shron for</b></p> <p>7 <b>their time in order to go to them and get the</b></p> <p>8 <b>information?</b></p> <p>9 <b>A I can't imagine any one of them</b></p> <p>10 <b>saying anything like that.</b></p> <p>11 MR. HAYWOODE: I withdraw</p> <p>12 that question.</p> <p>13 <b>Q Is it not the case that most of</b></p> <p>14 <b>the material that Cameron, Pryce &amp; Griffiths</b></p> <p>15 <b>were asking for they were being referred to</b></p> <p>16 <b>Marks, Paneth &amp; Shron to get it?</b></p> <p>17 MR. TRAUB: Objection.</p> <p>18 <b>Q Isn't that what took place here?</b></p> <p>19 MR. TRAUB: Objection to the</p> <p>20 form.</p> <p>21 Do you understand the</p> <p>22 question?</p> <p>23 <b>A Some of the information on some of</b></p> <p>24 <b>the accounts, specifically the account payable</b></p> <p>25 <b>account was -- would be more easily obtained</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 120</p> <p>2 <b>there was a discrepancy maybe then we could</b></p> <p>3 <b>have talked about what the amount was and</b></p> <p>4 <b>researched that, but that wasn't the case.</b></p> <p>5 <b>Q Did Marks, Paneth &amp; Shron have all</b></p> <p>6 <b>of the documentation that Dalton maintained?</b></p> <p>7 <b>A No.</b></p> <p>8 <b>Q They only have things that their</b></p> <p>9 <b>auditors pulled out selectively, correct?</b></p> <p>10 <b>A Yes.</b></p> <p>11 <b>Q So that can I assume that when</b></p> <p>12 <b>Cameron, Price &amp; Griffiths went to you and</b></p> <p>13 <b>looked at these documents that for the most</b></p> <p>14 <b>part they were asking for the exact same</b></p> <p>15 <b>selections that Marks, Paneth &amp; Shron had</b></p> <p>16 <b>asked you for, is that correct?</b></p> <p>17 MR. TRAUB: Objection to the</p> <p>18 form.</p> <p>19 You mean in these letters or</p> <p>20 over the six months?</p> <p>21 <b>Q Over the six months they were</b></p> <p>22 <b>constantly asking for the same information</b></p> <p>23 <b>that Marks, Paneth &amp; Shron had selected and</b></p> <p>24 <b>pulled out?</b></p> <p>25 <b>A We didn't presume to chose the</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>



<p>1 Dawley 121</p> <p>2 invoices. My accounts payable person wouldn't</p> <p>3 begin to do that. Their determination would</p> <p>4 not be considered as to what would be a proper</p> <p>5 classification of a expenditure and a payable</p> <p>6 for the end of the year. She would provide</p> <p>7 access to all the invoices we paid. We would</p> <p>8 -- we would provide access to all the checks</p> <p>9 that were written and any checks that was</p> <p>10 written there would be an invoice for it that</p> <p>11 would be reviewable to determine whether that</p> <p>12 was a year end expense or a new year expense</p> <p>13 and all that information was there and readily</p> <p>14 available.</p> <p>15 Q Dalton does not compile its own</p> <p>16 financial statement before Marks, Paneth &amp;</p> <p>17 Shron issues one?</p> <p>18 MR. KELLY: Objection to the</p> <p>19 form.</p> <p>20 A What do you mean?</p> <p>21 Q Does Dalton compile its own</p> <p>22 financial statement and say, "Look, on the</p> <p>23 cash basis this is our financial statement.</p> <p>24 This is what we have." Then do you convey that</p> <p>25 to Marks, Paneth &amp; Shron or do you just take</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 123</p> <p>2 income and expense income statement on a cash</p> <p>3 or accrual basis. The reason they have that</p> <p>4 option is because a lot of partners don't care</p> <p>5 about accruals. They don't care how much</p> <p>6 money you're billed. You bill the tenants.</p> <p>7 They want to know -- only know how much money</p> <p>8 you got in, how much money is spent and how</p> <p>9 much money you have at the end of the month</p> <p>10 for distribution to partners, so you'll find</p> <p>11 that a lot of property management companies</p> <p>12 provide a cash basis income and expense</p> <p>13 monthly statement to the partners so that they</p> <p>14 can determine how the cash is run.</p> <p>15 Q Dalton does that?</p> <p>16 A We do that on a cash basis.</p> <p>17 Q Is there any reason why you</p> <p>18 couldn't also provide an accrual statement, so</p> <p>19 that your work would be congruent with what</p> <p>20 Marks, Paneth &amp; Shron is doing?</p> <p>21 A With BJ Murray we chose to do it</p> <p>22 on a cash basis and only convert once a year.</p> <p>23 Q By giving the ingredients to</p> <p>24 Marks, Paneth &amp; Shron?</p> <p>25 A To make that statement.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 122</p> <p>2 all the accumulated data and pass it all to</p> <p>3 Marks, Paneth &amp; Shron for them to finalize?</p> <p>4 Which of those methods do you follow?</p> <p>5 MR. KELLY: Objection to</p> <p>6 form.</p> <p>7 A We provide the activity for the</p> <p>8 entire year on a cash basis to Marks, Paneth &amp;</p> <p>9 Shron for review.</p> <p>10 Q Is there a reason that you</p> <p>11 wouldn't keep your books on an accrual basis,</p> <p>12 so that it would be congruent to what they are</p> <p>13 doing?</p> <p>14 MR. TRAUB: Objection to</p> <p>15 form.</p> <p>16 Who is they?</p> <p>17 Q To what Marks, Paneth &amp; Shron are</p> <p>18 doing there on an accrual basis, you're doing</p> <p>19 it on a cash basis. Wouldn't it make more</p> <p>20 sense if you converted to an accrual basis</p> <p>21 only, so your work would be consonant with</p> <p>22 their work?</p> <p>23 A With the new Yardi System, the new</p> <p>24 software that we have been converting over to,</p> <p>25 you have the option of producing an in-coming</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 124</p> <p>2 Q By making no financial statement</p> <p>3 yourself, by depending on Marks, Paneth &amp;</p> <p>4 Shron to complete the final statement, is that</p> <p>5 correct, the only statement?</p> <p>6 MR. TRAUB: Objection to</p> <p>7 form.</p> <p>8 MR. KELLY: Objection to</p> <p>9 form.</p> <p>10 MR. HAYWOODE: I will</p> <p>11 withdraw it.</p> <p>12 Q The only end financial statement</p> <p>13 being composed here is that of auditors Marks,</p> <p>14 Paneth &amp; Shron, is that correct?</p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 MR. KELLY: Objection to</p> <p>18 form.</p> <p>19 A We produce on a monthly basis.</p> <p>20 That is -- that is also included in the files</p> <p>21 a financial statement on the cash basis.</p> <p>22 MR. TRAUB: I think this is</p> <p>23 a good time for a break.</p> <p>24 Q Under the terms of your management</p> <p>25 contract, does it say that you should produce</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 125</p> <p>2 your records under one form or the other?</p> <p>3 <b>A Not that I know of.</b></p> <p>4 <b>Q</b> Under the terms of the DHCR</p> <p>5 contract, does it restrict the amounts of</p> <p>6 money that are payable to the managing</p> <p>7 company?</p> <p>8 <b>A DHCR, as well as all the other</b></p> <p>9 <b>agencies; HPD, HDC and HUD, all prescribe what</b></p> <p>10 <b>the management fee is to be. The amount of</b></p> <p>11 <b>the management fee on Fifth and 106th, DHCR</b></p> <p>12 <b>actually has a form that they tell us how much</b></p> <p>13 <b>we can pay. It's not calculable. It's a</b></p> <p>14 <b>specific amount.</b></p> <p>15 <b>Q</b> Are there not contracts, which say</p> <p>16 how much money Dalton Management is supposed</p> <p>17 to receive from each development in a year?</p> <p>18 <b>A There is a management contract on</b></p> <p>19 <b>DHCR that they approve that they gave us.</b></p> <p>20 <b>It's like four years old now of how much we</b></p> <p>21 <b>can take out as a management fee.</b></p> <p>22 <b>Q</b> Does it also prescribe how much</p> <p>23 should be paid to the auditor?</p> <p>24 <b>A I believe there is an agreement in</b></p> <p>25 <b>there for the auditor.</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 127</p> <p>2 <b>Logan. They go through those things with a</b></p> <p>3 <b>fine tooth comb and we don't have any</b></p> <p>4 <b>irregularities from any of those auditors.</b></p> <p>5 <b>Q</b> How much was Marks, Paneth &amp; Shron</p> <p>6 supposed to be paid in 2006 under the terms of</p> <p>7 its auditing contract?</p> <p>8 MR. TRAUB: Objection to the</p> <p>9 form.</p> <p>10 MR. KELLY: Objection to the</p> <p>11 form.</p> <p>12 <b>A I couldn't tell.</b></p> <p>13 <b>Q</b> If I suggest it was \$34,000.00</p> <p>14 would that refresh your recollection?</p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 If you want to show him the</p> <p>18 document you can.</p> <p>19 MR. HAYWOODE: I asked him</p> <p>20 if it would refresh his</p> <p>21 recollection.</p> <p>22 <b>A I don't remember.</b></p> <p>23 <b>Q</b> If I suggest to that you that</p> <p>24 Marks, Paneth &amp; Shron received \$108,000.00 in</p> <p>25 2006, would that refresh your recollection as</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 126</p> <p>2 <b>Now, we have been reviewed by DHCR</b></p> <p>3 <b>and we are continually reviewed by DHCR. They</b></p> <p>4 <b>have a representative that comes in to do the</b></p> <p>5 <b>financial review. They come in a couple of</b></p> <p>6 <b>times a year and they look through our books</b></p> <p>7 <b>and records. They look at every check. They</b></p> <p>8 <b>check anything that they find that they want</b></p> <p>9 <b>to look at further. They check the invoice.</b></p> <p>10 <b>Excuse me, I am not done.</b></p> <p>11 MR. HAYWOODE: I move to</p> <p>12 strike some of this testimony as</p> <p>13 not responsive to my question,</p> <p>14 but go ahead.</p> <p>15 <b>A You asked. I am telling you.</b></p> <p>16 <b>Q</b> Don't mind that.</p> <p>17 <b>A About seven years ago we paid a</b></p> <p>18 <b>\$500.00 bonus to our property manager at</b></p> <p>19 <b>Lakeview. When they came in they caught that</b></p> <p>20 <b>\$500.00 out of thousands of dollars that go</b></p> <p>21 <b>out of that company. On a monthly basis, over</b></p> <p>22 <b>a six month period, it's like three or four</b></p> <p>23 <b>million. We paid that \$500.00 back. HPD</b></p> <p>24 <b>comes in on other properties. HDC comes in,</b></p> <p>25 <b>so we are audited on Church, Charles and</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 128</p> <p>2 to the contract amount or the amount that they</p> <p>3 received?</p> <p>4 MR. TRAUB: Again objection</p> <p>5 to form.</p> <p>6 MR. KELLY: Objection.</p> <p>7 MR. TRAUB: If you want to</p> <p>8 show him the contract, show him</p> <p>9 the contract.</p> <p>10 MR. HAYWOODE: I asked for</p> <p>11 his recollection.</p> <p>12 MR. TRAUB: I asked for a</p> <p>13 break for half an hour.</p> <p>14 <b>Q</b> Would that refresh your</p> <p>15 recollection, if I told you that they received</p> <p>16 \$108,000.00 in 2006 and that their contract</p> <p>17 called for \$34,000.00?</p> <p>18 MR. KELLY: Objection.</p> <p>19 MR. TRAUB: Objection to</p> <p>20 form.</p> <p>21 <b>Q</b> Is that your recollection of what</p> <p>22 took place?</p> <p>23 MR. KELLY: Objection.</p> <p>24 MR. TRAUB: Objection to</p> <p>25 form.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

1	Dawley	129	1	Dawley	131
2	<b>A First of all, I don't know if they</b>		2	<b>don't remember.</b>	
3	<b>received \$108,000.00 in 2006. If they did in</b>		3	<b>Q</b> Did Dalton's books suggest that	
4	<b>fact receive \$108,000.00 it wouldn't have been</b>		4	\$108,000.00 was paid to Marks, Paneth & Shron	
5	<b>just for an audit. It would have also been</b>		5	in 2006?	
6	<b>for the production of a rent increase</b>		6	MR. TRAUB: Objection.	
7	<b>application.</b>		7	Asked and answered.	
8	<b>Q</b> Do these contracts say that if any		8	MR. KELLY: Objection to	
9	sum, in addition to \$5,000.00, is to be paid		9	form.	
10	to the auditor that permission has to be		10	MR. TRAUB: He just answered	
11	obtained from DHCR to your knowledge?		11	it.	
12	MR. TRAUB: Again objection		12	<b>A I don't know.</b>	
13	to the form.		13	<b>Q</b> You don't know, fine.	
14	MR. KELLY: Objection to the		14	Is it not the fact that the	
15	form.		15	financial statement, simply reported fees	
16	<b>A Every expenditure that we get</b>		16	being paid to Marks, Paneth & Shron for	
17	<b>into, where we have a large contract for</b>		17	\$34,000.00 and that the other money was listed	
18	<b>construction or anything else, we get approved</b>		18	in the financial statement, the final	
19	<b>from DHCR.</b>		19	statement as consultant and other expenses?	
20	MR. HAYWOODE: Move to		20	MR. TRAUB: Objection to the	
21	strike as not responsive.		21	form.	
22	<b>Q</b> Do the contracts limit the amount		22	MR. KELLY: Objection to the	
23	of outside payment in excess of \$5,000.00		23	form.	
24	without DHCR approval to your knowledge?		24	<b>Q</b> Is that your recollection?	
25	MR. TRAUB: Objection to the		25	<b>A (No verbal response.)</b>	
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	800-608-6085			800-608-6085	
1	Dawley	130	1	Dawley	132
2	form.		2	MR. HAYWOODE: We are	
3	MR. KELLY: Objection to the		3	adjourned for lunch.	
4	form.		4	(Whereupon, a luncheon	
5	<b>A I think it's ten.</b>		5	recess was taken.)	
6	<b>Q</b> I am sorry?		6	MR. HAYWOODE: Gentlemen, I	
7	<b>A I think it's \$10,000.00.</b>		7	want to mark this document as	
8	<b>Q</b> So more than \$10,000.00 that is to		8	Plaintiff's 5.	
9	get approval to your recollection?		9	(A Logan Plaza document was	
10	<b>A Okay.</b>		10	marked as Plaintiff's	
11	<b>Q</b> Was there any approval issue in		11	Exhibit 5, for	
12	2006 that you know about?		12	identification, as of this	
13	MR. KELLY: Objection.		13	date.)	
14	MR. TRAUB: Objection to		14	<b>Q</b> With regard, sir, to Plaintiff's	
15	form.		15	5, which is a Logan Plaza Associates document	
16	<b>A I don't remember.</b>		16	prepared for December 2006, would you look at	
17	<b>Q</b> Finally, isn't it a fact that the		17	the document and tell me did you prepare that?	
18	books of records of Dalton recited in 2006		18	<b>A It could have been prepared in --</b>	
19	that Marks, Paneth & Shron receive \$108,000.00		19	<b>would have been prepared in our office. I</b>	
20	in that year?		20	<b>don't know if I personally prepared it.</b>	
21	MR. TRAUB: Objection to		21	<b>Q</b> By whom?	
22	form.		22	<b>A December 2006 that probably was</b>	
23	MR. KELLY: Objection to		23	<b>produced by Veronica Mackenzie. We produce</b>	
24	form.		24	<b>one at the end of each month.</b>	
25	<b>A I couldn't begin to tell you. I</b>		25	<b>Q</b> Would that have been conveyed to	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	



<p>1 Dawley 133</p> <p>2 Marks Paneth &amp; Shron?</p> <p>3 <b>A Yes.</b></p> <p>4 <b>Q</b> Do you have any independent</p> <p>5 recollection of its preparation or its</p> <p>6 conveyance to Marks, Paneth &amp; Shron?</p> <p>7 <b>A No.</b></p> <p>8 <b>Q</b> Did you ever read it before?</p> <p>9 <b>A I don't recall.</b></p> <p>10 <b>Q</b> Sir, looking at the document I</p> <p>11 direct your attention to the part which is</p> <p>12 somewhat darkened on Page 5. I want you to</p> <p>13 read it and tell me what you understand it to</p> <p>14 say.</p> <p>15 <b>A There are three items. There is</b></p> <p>16 <b>-- the vendor is Dalton Management, the total</b></p> <p>17 <b>\$181,927.02.</b></p> <p>18 <b>Q</b> I direct your attention to the</p> <p>19 earlier testimony when we started this</p> <p>20 morning, is that the \$180,000.00 that you</p> <p>21 testified to earlier this morning?</p> <p>22 <b>A When we were talking about Logan</b></p> <p>23 <b>Plaza and \$180,000 due to Dalton, yes.</b></p> <p>24 <b>Q</b> This morning you testified that</p> <p>25 the money was owed to Marion Scott or Prestige</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 135</p> <p>2 does it describe the money?</p> <p>3 <b>A One of the items it says January</b></p> <p>4 <b>1997 to June of 1997 fees. It says July 1997</b></p> <p>5 <b>to March 1998 fees and it says April 1998 to</b></p> <p>6 <b>June 1998 fees.</b></p> <p>7 <b>Q</b> Does it further characterize that</p> <p>8 money as to what it is?</p> <p>9 <b>A What do you mean characterize?</b></p> <p>10 <b>Q</b> Well, does it say anything else</p> <p>11 about the money?</p> <p>12 <b>A It's unpaid.</b></p> <p>13 <b>Q</b> Does it say anything else about</p> <p>14 the money?</p> <p>15 <b>A I don't know what you're asking.</b></p> <p>16 <b>Q</b> Is there any other identifying</p> <p>17 feature in that information concerning that</p> <p>18 money?</p> <p>19 MR. TRAUB: Other than what</p> <p>20 he's testified about?</p> <p>21 MR. HAYWOODE: Yes.</p> <p>22 <b>A I don't see anything.</b></p> <p>23 <b>Q</b> I direct your attention to the</p> <p>24 column on the extreme left, sir, under the</p> <p>25 heading of vendor.</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 134</p> <p>2 or Grenadier Management, is that correct?</p> <p>3 <b>A Yes.</b></p> <p>4 <b>Q</b> That one of the Seavey's had</p> <p>5 discussed that with you, is that correct?</p> <p>6 <b>A Yes.</b></p> <p>7 <b>Q</b> And William Jennings, this had</p> <p>8 come to his attention and he discussed it and</p> <p>9 gave certain advice with regard to it, is that</p> <p>10 correct?</p> <p>11 MR. TRAUB: Objection to the</p> <p>12 form.</p> <p>13 <b>Q</b> Was that pretty much what you</p> <p>14 testified to?</p> <p>15 <b>A Well, advice to who?</b></p> <p>16 <b>Q</b> To the Seavey's I presume. I</p> <p>17 don't know.</p> <p>18 <b>A It's my understanding he indicated</b></p> <p>19 <b>what would transpire if they were to write it</b></p> <p>20 <b>off, yes.</b></p> <p>21 <b>Q</b> This was money which originated</p> <p>22 some time before the year 2000 I assume, is</p> <p>23 that correct?</p> <p>24 <b>A As far as I know, yes.</b></p> <p>25 <b>Q</b> Now, looking at that document how</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 136</p> <p>2 <b>A Yes, we already discussed that it</b></p> <p>3 <b>was Dalton Management.</b></p> <p>4 <b>Q</b> So that if someone were to look at</p> <p>5 that document by way of audit or anything else</p> <p>6 they would conclude that this was money owed</p> <p>7 to Dalton Management, is that correct?</p> <p>8 MR. TRAUB: Objection to the</p> <p>9 form.</p> <p>10 Are you asking him what</p> <p>11 someone would conclude other than</p> <p>12 him?</p> <p>13 <b>Q</b> Well, the document says that the</p> <p>14 money is owed to Dalton Management, isn't that</p> <p>15 correct?</p> <p>16 <b>A This is a list of unpaid, which is</b></p> <p>17 <b>payables that shows that there is 181,927.02</b></p> <p>18 <b>that is unpaid that is due to Dalton</b></p> <p>19 <b>Management.</b></p> <p>20 <b>Q</b> But isn't that the same money that</p> <p>21 you testified earlier this morning was owed to</p> <p>22 either Prestige or Marion Scott or Grenadier</p> <p>23 Management?</p> <p>24 <b>A That's correct.</b></p> <p>25 <b>Q</b> You knew it was owed at that time</p> <p style="text-align: center;">LEX REPORTING SERVICE 800-608-6085</p>

1 Dawley 137

2 to one of those three organizations, is that

3 correct?

4 **A Yes.**

5 **Q** William Jennings knew it was owed

6 to one of those three organizations at that

7 time, is that correct?

8 **MR. TRAUB:** Objection to the

9 form.

10 **A I don't know what Bill knows.**

11 **Q** Well, he certainly had discussed

12 the matter with one of the Seavey's according

13 to your testimony, is that correct?

14 **A What I was told is that Bill**

15 **Jennings told them, the Seavey's, that there**

16 **was an amount due of \$181,000.00 and that if**

17 **they wanted to write it off they would have to**

18 **pick it up as income, 'cause it had been taken**

19 **as an expense in those prior years.**

20 **Q** Sir, did you or anyone at Marks,

21 Paneth & Shron have the consciousness at the

22 time this entry was generated that this money

23 was not owed to Dalton management, but that it

24 was owed to either Grenadier Marion Scott or

25 Prestige?

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1 Dawley 138

2 **MR. TRAUB:** Objection to

3 form.

4 **MR. KELLY:** Objection to

5 form.

6 **MR. TRAUB:** Already asked

7 and answered.

8 **A You got to ask it again. I got**

9 **too many objections. I forgot what you asked.**

10 **MR. HAYWOODE:** Asked and

11 answered is not an objection

12 anymore.

13 **Q** Didn't you know when you looked at

14 that entry and Dalton's name was on it and

15 didn't William Jennings or somebody at Marks,

16 Paneth & Shron know when they looked at that

17 entry that this money being listed as owed to

18 Dalton was in fact not owed to Dalton?

19 **MR. TRAUB:** Objection to

20 form.

21 Asked and answered.

22 **MR. KELLY:** Objection to

23 form.

24 **A When this was put on the books it**

25 **was -- we knew it was owed to Dalton, but we**

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1 Dawley 139

2 **knew that there was an amount that had been**

3 **expensed in prior years that was due and in**

4 **the same amount. So we classified it as due**

5 **to Dalton, because if we didn't classify it as**

6 **a payable it would have to be picked up as**

7 **income and each of the partners would have to**

8 **pick up \$90,000.00 of income so Dalton was**

9 **used as the vendor to be payable to.**

10 **Q** Look, and I know I am not an

11 accountant, but if I owe money to Abraham &

12 Strauss and to Bloomingdales and I know that

13 they haven't come around to pick up that money

14 can I carry it on my books as a receivable

15 payable to Macys?

16 **MR. TRAUB:** Objection to

17 form.

18 **MR. KELLY:** Objection to

19 form.

20 **MR. TRAUB:** Improper

21 hypothetical.

22 **A I really don't know what you're**

23 **trying to ask. I have tried to answer this**

24 **every way that I can.**

25 **Q** I will ask it again.

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1 Dawley 140

2 **A We discussed it, I mean, forever.**

3 **Q** Suppose I was the accountant or

4 the auditor and I wrote my name as the vendor

5 on that receivable, wouldn't that suggest that

6 at some point in time that money could

7 possibly be collected by me?

8 **MR. TRAUB:** Objection to the

9 form.

10 **MR. KELLY:** Objection to

11 form.

12 **MR. TRAUB:** It calls for a

13 legal conclusion.

14 **A No, it calls for an accounting**

15 **conclusion. You have your objection.**

16 **Q** Wouldn't that create a

17 precondition for somebody to come around and

18 say give the money to Haywoode and be done

19 with it?

20 **A Your hypotheticals are great.**

21 **Q** Are they true? I don't want to be

22 great. I want it to be true.

23 **A That isn't the situation the**

24 **Yankees and Mets, A&S and Bloomingdales, that**

25 **isn't even considered.**

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<p>1 Dawley 141</p> <p>2 <b>Dalton Management I was told had</b></p> <p>3 <b>an agreement with John Edmonds. They were</b></p> <p>4 <b>going to if they got the money and they paid</b></p> <p>5 <b>it they would split it 50/50. Now, we could</b></p> <p>6 <b>have put John Edmonds on that too and he would</b></p> <p>7 <b>have made the same agreement to pay Dalton</b></p> <p>8 <b>their 50 percent, didn't make any difference</b></p> <p>9 <b>to me one way or the other.</b></p> <p>10 MR. HAYWOODE: I move to</p> <p>11 strike that part of the testimony</p> <p>12 which is speculation as to what</p> <p>13 was done here.</p> <p>14 MR. TRAUB: I think it was a</p> <p>15 hypothetical. I think it</p> <p>16 answered your hypothetical.</p> <p>17 MR. HAYWOODE: I appreciate</p> <p>18 it's a hypothetical answer.</p> <p>19 <b>A Better than the Mets and the New</b></p> <p>20 <b>York Yankees.</b></p> <p>21 <b>Q</b> Let's deal with what we know.</p> <p>22 Had we put the Mets or the Giants</p> <p>23 or the Cardinal's name as the vendor on that</p> <p>24 deck, that would have been the first predicate</p> <p>25 step to transferring \$181,000.00 to the Mets,</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 143</p> <p>2 <b>I can put down Goofy. Goofy isn't going to</b></p> <p>3 <b>come in and make a claim for \$180,000 if he</b></p> <p>4 <b>isn't owed the money.</b></p> <p>5 <b>Q</b> But you indicated it was the</p> <p>6 expectation that eventually Dalton would claim</p> <p>7 the money?</p> <p>8 MR. TRAUB: Objection to</p> <p>9 form.</p> <p>10 Let him finish his answer</p> <p>11 before you interrupt him with</p> <p>12 another question.</p> <p>13 <b>Q</b> Were you finished?</p> <p>14 <b>A</b> No.</p> <p>15 <b>There was an agreement. My</b></p> <p>16 <b>understanding was the agreement was between</b></p> <p>17 <b>the Seavey's and John Edmonds that the</b></p> <p>18 <b>\$180,000 they were both aware of was due to a</b></p> <p>19 <b>prior management company. Which one I don't</b></p> <p>20 <b>remember, don't care. So they said let's put</b></p> <p>21 <b>it on the books and leave it on the books. If</b></p> <p>22 <b>we don't leave it on the books then they will</b></p> <p>23 <b>each have to pick up \$90,000.00 of income on</b></p> <p>24 <b>their taxes. I am not done. By putting this</b></p> <p>25 <b>under Dalton, it could have been just as</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 142</p> <p>2 Giants, Yankees, A&amp;S, M. Douglas Haywoode or</p> <p>3 anybody else that I named as a vendor. That</p> <p>4 would have been the first predicate step in</p> <p>5 establishing a claim to \$180,000, would it not</p> <p>6 in someone who wasn't owed the money, isn't</p> <p>7 that so?</p> <p>8 MR. TRAUB: Objection to</p> <p>9 form and calls for a legal</p> <p>10 conclusion.</p> <p>11 MR. KELLY: Objection to</p> <p>12 form.</p> <p>13 MR. HAYWOODE: No, it calls</p> <p>14 for an accounting conclusion.</p> <p>15 <b>Q</b> As a matter of accounting, isn't</p> <p>16 that a first step to allow whoever's name you</p> <p>17 wrote there to come in and claim that money,</p> <p>18 wouldn't it?</p> <p>19 MR. TRAUB: Again objection</p> <p>20 to form. It calls for a legal</p> <p>21 conclusion.</p> <p>22 MR. KELLY: Objection.</p> <p>23 <b>A</b> <b>People can't come in and say you</b></p> <p>24 <b>owe me \$100,000.00 without some sort of proof</b></p> <p>25 <b>and verification. I can put any name I want.</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 144</p> <p>2 <b>easily been Dalton Edmonds, Edmonds Dalton,</b></p> <p>3 <b>could be anything, any combination of the</b></p> <p>4 <b>partners, I didn't care, because the partners</b></p> <p>5 <b>owned the company. The money was due the</b></p> <p>6 <b>partners. It wasn't due to the Mets, the</b></p> <p>7 <b>Giants, the Yankees or anybody else. Nobody</b></p> <p>8 <b>else's name appeared there. It was only</b></p> <p>9 <b>Dalton and their agreement was, as I</b></p> <p>10 <b>understood that agreement, that they would</b></p> <p>11 <b>split the funds so they were partners. It</b></p> <p>12 <b>didn't make any difference to me one way or</b></p> <p>13 <b>the other.</b></p> <p>14 <b>Q</b> Well, sir, do you agree with me</p> <p>15 that the worker accounting at some point is</p> <p>16 tangent to reality and the truth?</p> <p>17 MR. TRAUB: Objection to the</p> <p>18 form.</p> <p>19 MR. KELLY: Objection to the</p> <p>20 form.</p> <p>21 <b>Q</b> Do you agree with me that what I</p> <p>22 do as an accountant has got to be true</p> <p>23 somewhere either in the world of accruals or</p> <p>24 in the world of cash?</p> <p>25 MR. TRAUB: Objection to</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

1	Dawley	145	1	Dawley	147
2	form.		2	deposition. We hear the	
3	<b>Q</b> Got to be the truth, right?		3	questioner's voice and the	
4	<b>A</b> <b>Simple answer, yes.</b>		4	witness's voice and the	
	<b>Q</b> So that it was not true that		5	attorney's voice saying objection	
	Dalton owned that money was it?		6	or I won't allow him to answer.	
7	MR. TRAUB: Objection to the		7	If it isn't that you shouldn't be	
8	form.		8	speaking, Darren.	
9	MR. KELLY: Objection.		9	MR. TRAUB: I made my	
10	MR. TRAUB: Asked and		10	objection. You decided to make	
11	answered.		11	it into something else. For	
12	MR. HAYWOODE: That's not an		12	whatever reason you want to argue	
13	objection asked and answered.		13	with me.	
14	MR. TRAUB: I don't need you		14	MR. HAYWOODE: I want to get	
15	to argue with me about my		15	out of here some time.	
16	objections.		16	MR. TRAUB: Stop responding	
17	MR. HAYWOODE: You make it		17	to my objections, because I am	
18	repeatedly, but that's not an		18	not making them for you.	
19	objection that you're allowed to		19	MR. HAYWOODE: What was the	
20	make.		20	last question?	
21	MR. TRAUB: Let me tell you		21	The only objection that you	
22	I am here to do three things;		22	make for the record is I object	
23	number one, make sure that your		23	to it and you might say it's not	
24	questions are appropriate and		24	relevant if you wish.	
25	clear. Number two, keep you from		25	MR. TRAUB: I can say asked	
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	Dawley	146	1	Dawley	148
2	badgering the witness with the		2	and answered.	
3	same question for over an hour		3	MR. HAYWOODE: It's not	
4	and three, to protect the		4	relevant, that's it.	
5	integrity of the record. I think		5	MR. TRAUB: I am allowed to	
6	I am doing a good job with all of		6	say asked and answered.	
7	that in keeping you in line.		7	Are you debating with me?	
8	When I make an objection you		8	He's here to answer your	
9	don't need to argue with me about		9	questions and I am here --	
10	my objections.		10	MR. HAYWOODE: I am not	
11	MR. HAYWOODE: Just say I		11	debating with you.	
12	object and the witness is		12	Read back my last question.	
13	directed to answer or the witness		13	(Whereupon, the requested	
14	may not answer. That is what the		14	portion was read back by the	
15	new regulations are about.		15	reporter.)	
16	MR. TRAUB: My objection		16	<b>A</b> <b>That's true, yes.</b>	
17	doesn't need you to respond to		17	<b>Q</b> The statement is a fiction?	
18	me.		18	MR. TRAUB: Objection.	
19	MR. HAYWOODE: Your		19	<b>Q</b> It wasn't true?	
20	objections should not be on this		20	MR. TRAUB: Objection to the	
21	record in depth. Lawyers		21	form.	
22	objections, yours or mine, should		22	MR. KELLY: Objection to the	
	not be having colloquy on the		23	form.	
24	record. It has nothing to do		24	<b>Q</b> It wasn't true?	
25	with the purpose of this		25	MR. TRAUB: Objection to the	
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	800-608-6085			800-608-6085	

1 Dawley 149  
 2 form.  
 3 MR. KELLY: Objection to the  
 4 form.  
 5 Q It wasn't true?  
 6 MR. TRAUB: You can answer  
 7 the question.  
 8 A I know, but --  
 9 MR. TRAUB: You don't need  
 10 to repeat the question every time  
 11 we make an objection.  
 12 Q It wasn't true?  
 13 MR. TRAUB: Objection to the  
 14 form.  
 15 MR. KELLY: Objection to the  
 16 form.  
 17 A This statement, that one line  
 18 item, is a line item that you spoke about  
 19 Dalton Management that you just asked was not  
 20 true to Dalton Management and I said that's  
 21 correct.  
 22 Q It wasn't true?  
 23 MR. TRAUB: Objection to the  
 24 form.  
 25 MR. KELLY: Objection to the  
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1 Dawley 150  
 2 form.  
 3 A It wasn't due to Dalton  
 4 Management.  
 5 Q The statement wasn't true, is it  
 6 fair to say that?  
 7 MR. TRAUB: Now, you're  
 8 badgering the witness. You don't  
 9 have to answer anymore.  
 10 A Only with regard to that one item.  
 11 Q This item though was reported to  
 12 the partnership and to DHCR and everybody  
 13 else, is that correct?  
 14 A This doesn't go to DHCR.  
 15 Q But it was there for DHCR to  
 16 review if as you testified previously they  
 17 came in to review it, was it not?  
 18 A Yes.  
 19 Q It was given to Marks, Paneth &  
 20 Shron, correct?  
 21 A Yes.  
 22 Q They knew it wasn't true, didn't  
 23 they?  
 24 MR. TRAUB: Objection to the  
 25 form.  
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1 Dawley 151  
 2 MR. KELLY: Objection.  
 3 A I don't know what they knew.  
 4 Q William Jennings had discussed it  
 5 with one of the Seavey's, is that correct?  
 6 A That's correct.  
 7 Q \$181,000.00 just passed along for  
 8 eight years and is still passing along waiting  
 9 for someone to lay claim to it, is that  
 10 correct?  
 11 A It's waiting for the partners to  
 12 make a decision on what they are going to do  
 13 with it.  
 14 Q You say it's lawful for the  
 15 partners to defer that decision ad infinitum?  
 16 MR. HAYWOODE: Objection.  
 17 MR. KELLY: Objection.  
 18 A I don't know about lawful, but the  
 19 partners can put a payable on the record and  
 20 leave it there. That's up to them.  
 21 Q In the intervening period should  
 22 any question arise, there is documented  
 23 evidence provided by Dalton and acquiesced by  
 24 Marks, Paneth & Shron that the money ought to  
 25 go to Dalton?  
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1 Dawley 152  
 2 MR. KELLY: Objection to the  
 3 form.  
 4 MR. TRAUB: Objection to the  
 5 form.  
 6 Q There is documentary evidence now,  
 7 whether it's true or not, there is documentary  
 8 evidence that that money ought to go to  
 9 Dalton?  
 10 MR. TRAUB: Objection to  
 11 form.  
 12 MR. KELLY: Objection to  
 13 form.  
 14 A The partners agreed the money  
 15 should go on the books and if it was ever  
 16 written or disbursed off it would be split  
 17 50/50.  
 18 Q You didn't hear John Edmonds, hear  
 19 any agreement with anybody to that effect, is  
 20 that correct?  
 21 A That's correct.  
 22 Q All you know about that is what  
 23 one of the Seavey's told to you, is that  
 24 correct?  
 25 A That's correct.  
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1 Dawley 153

2 Q All we know about the facts is

3 that Dalton's name was put on their account,

4 is that correct?

5 A That's correct.

6 Q John Edmonds has no part of

7 Dalton, is that correct?

8 A No, he does not own Dalton.

9 Q Is it not a fact that under the

10 terms of the management contract --

11 MR. TRAUB: Which management

12 contract?

13 Q With the four investments, that

14 front-line manager's costs are to be born by

15 the management company Dalton?

16 A No.

17 Q Not by the partnership, is that

18 not a fact?

19 A No.

20 Q What is the actuality of that

21 circumstance?

22 A Well, I mean can you be more

23 specific which circumstances?

24 Q Well, should the partnership be

25 charged, can the partnership be charged with

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1 Dawley 154

2 central office costs?

3 A Yes, in some of the partnerships,

4 not all of them.

5 Q Well, with regard to the four

6 investments that John Edmonds has an interest

7 with the Seavey's.

8 A Right.

9 Q Can the salaries of yourself, Ms.

10 Mondesir and the others be given to the

11 partnerships?

12 A What do you mean given?

13 Q Should they pay a portion of your

14 salaries?

15 MR. KELLY: Objection to

16 form.

17 A DHCR does not pay. They only what

18 their agreement calls for. There is nothing

19 over and above that or any calculation or any

20 percentages of the salaries charged to Fifth

21 and 106th Street Associates, which is DHCR.

22 Q I show you this page Number 8. I

23 am going to mark this for identification as

24 Plaintiff's Exhibit 6. It's from the Logan

25 Plaza agreement. I direct your attention to

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1 Dawley 155

2 Paragraph I, which reads, except as otherwise

3 provided in this agreement all of the agents

4 home office, bookkeeping, clerical and other

5 management payroll and overhead expenses

6 including, but not limited to cost, office

7 supplies, and equipment, postage,

8 transportation for managerial personnel and

9 telephone services will be born by the agents

10 out of his own funds and will not be treated

11 as project expenses.

12 I show you this document and ask

13 you if you recognize it and then your counsel

14 has an objection.

15 MR. TRAUB: I would like to

16 mark the entire agreement not

17 just this one page, especially

18 because it says here except as

19 otherwise provided in this

20 agreement. I would like the full

21 agreement on the record since

22 this is something else that

23 appears to be relevant.

24 MR. KELLY: I join in that

25 request.

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1 Dawley 156

2 MR. HAYWOODE: At this

3 point, pursuant to counsel's

4 objection, I am go to ask the

5 court reporter to mark this as

6 Plaintiff's Exhibit 6.

7 We are marking the entire

8 housing management agreement of

9 January 3, 2000 with Logan Plaza

10 Associates as Plaintiff's Exhibit

11 6.

12 (The entire Logan Plaza

13 housing agreement of

14 1/2/2000 was marked as

15 Plaintiff's Exhibit 6, for

16 identification, as of this

17 date.)

18 Q Now, with regard to Exhibit 6,

19 Page 8, we just read.

20 A I didn't read it, but that's okay.

21 Q I am going to leave it here for

22 you to look at Page 8 and I'm going to take

23 out for the time being Page 5. Just go down

24 two if you will, sir, and get to Page 8 so you

25 can read it.

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<p>1 Dawley 157</p> <p>2 <b>A Just the one paragraph?</b></p> <p>3 <b>Q</b> Yes, that is just the one that's</p> <p>4 darkened.</p> <p>5 Now, with regard to Page 8 the</p> <p>6 part that we directed your attention to?</p> <p>7 <b>A Right.</b></p> <p>8 <b>Q</b> That doesn't suggest that the</p> <p>9 project would share in the expenses of the</p> <p>10 central office personnel, does it? And yes or</p> <p>11 no might get along more quickly, but if there</p> <p>12 is an answer for it.</p> <p>13 <b>A This is a two part agreement that</b></p> <p>14 <b>speaks to the management fee. This was -- HUD</b></p> <p>15 <b>regulation and calculation applies to all</b></p> <p>16 <b>three of the projects, Church, Charles and</b></p> <p>17 <b>Logan. It does not apply to Lakeview or Fifth</b></p> <p>18 <b>and 106th because they are regulated by DHCR.</b></p> <p>19 <b>On HUD regulations you're allowed to charge as</b></p> <p>20 <b>a management fee \$44.00 per unit per-month.</b></p> <p>21 <b>You're also allowed to charge what's referred</b></p> <p>22 <b>to as front-line expenditures. Calculation of</b></p> <p>23 <b>the front-line expenditures is very specific.</b></p> <p>24 <b>We've been audited on the front-line</b></p> <p>25 <b>expenditures by both DHCR, HUD and HDC.</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 159</p> <p>2 look at our books and look at every check we</p> <p>3 wrote. We have continued to use that same</p> <p>4 procedure for the last eight plus years, at</p> <p>5 which time we have been audited by all the</p> <p>6 agencies numerous times without any question</p> <p>7 that these were improper or improperly</p> <p>8 calculated. We've continued to use the same</p> <p>9 procedures for the last eight years, which is</p> <p>10 in line with this agreement.</p> <p>11 <b>Q</b> Do you see on Page 5 in Paragraph</p> <p>12 13-B, anything which would support the policy</p> <p>13 that you say Mr. Tefuro told you was</p> <p>14 acceptable?</p> <p>15 MR. TRAUB: Objection to</p> <p>16 form.</p> <p>17 <b>A Let's read it.</b></p> <p>18 The owner will reimburse the</p> <p>19 agent, which is Dalton Management for</p> <p>20 compensation including fringe benefits,</p> <p>21 payroll taxes, medical expenses, payable to</p> <p>22 front-line management employees such as</p> <p>23 project manager. Our project managers in the</p> <p>24 field, clerical and bookkeeping personnel,</p> <p>25 accounts payable, our compliance officer, our</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 158</p> <p>2 James Tefuro from HDC was the</p> <p>3 first one that came in. I went through it</p> <p>4 with him personally how to make the</p> <p>5 calculations so they would be acceptable to</p> <p>6 the agencies. His instructions were that you</p> <p>7 took your salary of people that were involved</p> <p>8 in the management of the companies and you</p> <p>9 would divide them by the number of units that</p> <p>10 you managed. You would also take certain</p> <p>11 expenditures that would be allowed to go in as</p> <p>12 a expense and you would allocate those by the</p> <p>13 number of units in each property. Those</p> <p>14 expenses are in addition to salary which is</p> <p>15 one item, payroll taxes, office expenses, ten</p> <p>16 percent of telephone and medical expenses.</p> <p>17 <b>Q</b> Would you spell for the record the</p> <p>18 name of this gentleman who told you this from</p> <p>19 DHCR?</p> <p>20 <b>A T-E-F-U-R-O.</b></p> <p>21 <b>Q</b> Is he still employed at DHCR?</p> <p>22 <b>A Yes.</b></p> <p>23 <b>Q</b> When did he tell you this?</p> <p>24 <b>A Just after we took it over in</b></p> <p>25 <b>2000. He was the first one that came in to</b></p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 160</p> <p>2 payroll clerk, our assistant controller and</p> <p>3 myself all fall under that category.</p> <p>4 Maintenance employees, we didn't have</p> <p>5 in-resident superintendents. We don't have</p> <p>6 any social service directors. We don't have</p> <p>7 any for all state, local and federal taxes,</p> <p>8 payroll taxes including, but not limited to</p> <p>9 social security taxes, employment insurance</p> <p>10 and workman's compensation insurance, all of</p> <p>11 which are included in front-line incident to</p> <p>12 the employment of such personnel, the people I</p> <p>13 so mentioned. Such reimbursements will be</p> <p>14 paid out of the rental agency account and will</p> <p>15 be treated as project expenses. For this</p> <p>16 purpose the rental value of any dwelling unit</p> <p>17 furnished rent free for the resident</p> <p>18 superintendent will not be considered a part</p> <p>19 of their compensation, but will be treated as</p> <p>20 a project expense, which we don't have that</p> <p>21 problem, because we don't have a</p> <p>22 superintendent on our payroll. He's on the</p> <p>23 building payroll.</p> <p>24 MR. HAYWOODE: Sir, I move</p> <p>25 to strike so much of that answer</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 161</p> <p>2 which is not responsive to the</p> <p>3 question.</p> <p>4 <b>Q</b> Did you say that the paragraph on</p> <p>5 Page 5 it supports the policy that you just</p> <p>6 described or does it not?</p> <p>7 <b>A</b> Supports it.</p> <p>8 <b>Q</b> It supports it?</p> <p>9 <b>A</b> Supports it.</p> <p>10 <b>Q</b> In your interpretation?</p> <p>11 <b>A</b> Yes.</p> <p>12 <b>Q</b> You say that front-line personnel</p> <p>13 such as the superintendent, who's mentioned on</p> <p>14 Page 5, and the social worker, you say that</p> <p>15 those people are in the category of persons</p> <p>16 who would be in the central office?</p> <p>17 <b>A</b> No.</p> <p>18 MR. TRAUB: Objection.</p> <p>19 <b>A</b> I said those people we don't</p> <p>20 consider, because we don't employ a</p> <p>21 superintendent on Dalton payroll. We don't</p> <p>22 employ a social services director on the</p> <p>23 building payroll. In fact, we don't employ a</p> <p>24 social services director any place. The</p> <p>25 superintendent is in each building and is</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 163</p> <p>2 in building management.</p> <p>3 MR. TRAUB: I don't need you</p> <p>4 to argue with my objection.</p> <p>5 MR. HAYWOODE: You know,</p> <p>6 Darren --</p> <p>7 MR. TRAUB: Here you go</p> <p>8 again.</p> <p>9 MR. HAYWOODE: You're making</p> <p>10 them though. I am answering</p> <p>11 them. None of us should be</p> <p>12 speaking. Just say I object.</p> <p>13 MR. TRAUB: I do and then</p> <p>14 you want to respond to me again.</p> <p>15 MR. HAYWOODE: But then you</p> <p>16 gave a reason. You don't need to</p> <p>17 elaborate.</p> <p>18 <b>Q</b> In your opinion, sir, you say</p> <p>19 you're not a lawyer. I am not an accountant.</p> <p>20 I'm not a fighter pilot. You know, I make</p> <p>21 common sense judgements. I can't evening</p> <p>22 advise anybody as to the law. I can advise</p> <p>23 them, but you know.</p> <p>24 <b>A</b> On Page 8, Item 5 it starts off --</p> <p>25 Exhibit says except as otherwise provided in</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 162</p> <p>2 under a union contract with 32BJ and is paid</p> <p>3 under that union contract by the building</p> <p>4 directly.</p> <p>5 <b>Q</b> So you maintain that the authority</p> <p>6 or the system that Mr. Tefuro told you about</p> <p>7 exists in that in that passage of Page 5,</p> <p>8 which is the item --</p> <p>9 MR. TRAUB: 13-B.</p> <p>10 <b>Q</b> 13-B you say that's the authority</p> <p>11 for you doing this?</p> <p>12 <b>A</b> Yes.</p> <p>13 <b>Q</b> Now, it appears that agreement you</p> <p>14 just read, given your interpretation and the</p> <p>15 differences between Page 8 and Page 5, seem to</p> <p>16 suggest some dissonance, some disparity, does</p> <p>17 it not?</p> <p>18 MR. TRAUB: Objection to</p> <p>19 form.</p> <p>20 MR. KELLY: Objection to</p> <p>21 form.</p> <p>22 MR. TRAUB: Calls for a</p> <p>23 legal conclusion.</p> <p>24 MR. HAYWOODE: No, it calls</p> <p>25 for an opinion by a person who's</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 164</p> <p>2 this agreement.</p> <p>3 <b>Q</b> Okay.</p> <p>4 <b>A</b> The except as otherwise provided</p> <p>5 in this agreement means to me that the --</p> <p>6 <b>Q</b> Page 5.</p> <p>7 <b>A</b> I am looking at that item 13-B is</p> <p>8 the except as otherwise provided.</p> <p>9 <b>Q</b> Okay.</p> <p>10 MR. HAYWOODE: I am going to</p> <p>11 ask the reporter to mark this</p> <p>12 document as Plaintiff's Exhibit</p> <p>13 7, which is the retainer</p> <p>14 agreement for auditing services</p> <p>15 from Marks, Paneth &amp; Shron with</p> <p>16 Fifth and 106th Street</p> <p>17 Corporation, which would be</p> <p>18 Plaintiff's Exhibit 7.</p> <p>19 (A retainer agreement for</p> <p>20 auditing services from</p> <p>21 Marks, Paneth &amp; Shron was</p> <p>22 marked as Plaintiff's</p> <p>23 Exhibit 7, for</p> <p>24 identification, as of this</p> <p>25 date.)</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>

1 Dawley 165  
 2 MR. KELLY: Can we have a  
 3 year on it?  
 4 THE WITNESS: December 31,  
 5 2004. This is 2004.  
 6 Q Sir, that's basically the  
 7 agreement that was made by Marks, Paneth &  
 8 Shron in 2004 which would have been issued in  
 9 2005. That's the agreement --  
 10 MR. TRAUB: For which  
 11 company?  
 12 MR. HAYWOODE: Marks, Paneth  
 13 & Shron.  
 14 MR. TRAUB: And who?  
 15 MR. HAYWOODE: Fifth and  
 16 106th Street Associates.  
 17 MR. KELLY: I will object to  
 18 form.  
 19 Q Has that agreement changed  
 20 basically for 2006 or is it pretty much the  
 21 same?  
 22 A I have no idea.  
 23 Q I direct your attention to Page 2,  
 24 the second part of Paragraph three and ask you  
 25 to read it and tell me what it says?  
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1 Dawley 166  
 2 A Second paragraph says, we will  
 3 immediately notify DHCR in writing of any  
 4 indication of noncompliance, legal acts or  
 5 irregularities with respect to the operation  
 6 of this housing company. Further, we will  
 7 provide DHCR with copies of any correspondence  
 8 issued concerning any errors or significant  
 9 deficiencies or failures in the design or  
 10 operation of the internal control structure.  
 11 Written notification to DHCR will also be made  
 12 of oral communication to the company or its  
 13 representative concerning any of these  
 14 matters. However, notification of DHCR need  
 15 not be made for matters clearly  
 16 inconsequential to the sound financial  
 17 operation of the housing company.  
 18 Q I just want to briefly direct your  
 19 attention again to the \$181,000.00.  
 20 The discussion that you had with  
 21 one of the Seavey's about it first, did you  
 22 feel yourself bound by this obligation of  
 23 Marks, Paneth & Shron?  
 24 A Well, this is --  
 25 MR. KELLY: Objection to  
 LEX REPORTING SERVICE  
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1 Dawley 167  
 2 form.  
 3 A This is for Fifth and 106th Street  
 4 Associates and the \$180,000 at issue is on  
 5 Logan Plaza.  
 6 Q But DHCR is concerned with Logan  
 7 Plaza also, is it not?  
 8 A No.  
 9 Q In no way?  
 10 A No.  
 11 Q So that it's your position then  
 12 that the problem of \$181,000.00, since it was  
 13 in Logan Plaza and not in Fifth and 106th  
 14 Street, should not be touched by the purview  
 15 or the pale of this agreement?  
 16 MR. TRAUB: Objection to the  
 17 form.  
 18 MR. KELLY: Join.  
 19 A Well, this agreement is a retainer  
 20 agreement for Fifth and 106th Street  
 21 Associates not Logan Plaza.  
 22 Q You say that nothing that is said  
 23 here, ought to apply to anything that has to  
 24 do with Logan Plaza in your interpretation;  
 25 that is your position?  
 LEX REPORTING SERVICE  
 800-608-6085

1 Dawley 168  
 2 A You would have a separate  
 3 agreement for Logan Plaza.  
 4 Q You did not see it as your duty to  
 5 report what you knew about the \$181,000.00 to  
 6 DHCR or any other regulatory agency, is that  
 7 correct?  
 8 MR. TRAUB: Objection to the  
 9 form.  
 10 MR. KELLY: Objection to  
 11 form.  
 12 A No.  
 13 Q So far as you know, Mr. Jennings  
 14 did not report that incident or his knowledge  
 15 of it to DHCR or any of the other regulatory  
 16 agencies?  
 17 MR. TRAUB: Objection to  
 18 form.  
 19 MR. KELLY: Join.  
 20 A I don't know what he reported to  
 21 them.  
 22 Q You never requested that he do so?  
 23 MR. TRAUB: Objection to the  
 24 form.  
 25 MR. KELLY: Objection to the  
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1	Dawley	169	1	Dawley	171
2	form.		2	form.	
3	<b>A No.</b>		3	Which building?	
4	MR. HAYWOODE: Let me refer		4	<b>A Which building?</b>	
5	you now and look at a document		5	<b>Q</b> Let's see, was this Charles Hill	
6	which was Exhibit 12 at the		6	or Church Home?	
7	deposition of February 3rd and		7	You don't recall it?	
8	ask that it be marked as		8	<b>A No.</b>	
9	Plaintiff's Exhibit 8.		9	<b>Q</b> Is there a security company,	
10	(Two sets of requests was		10	functioning at one of the four investments,	
11	marked as Plaintiff's		11	that's functioning without a contract?	
12	Exhibit 8, for		12	<b>A Yes.</b>	
13	identification, as of this		13	<b>Q</b> Which development is that?	
14	date.)		14	<b>A Lakeview doesn't have a contract.</b>	
15	<b>Q</b> I am going to direct your		15	<b>I believe it has expired.</b>	
16	attention, sir, to some of these questions		16	<b>Q</b> Do any of the other building not	
17	that were raised previously on discovery.		17	have a contract?	
18	Isn't it a fact that almost all		18	<b>A I'm not sure.</b>	
19	the negotiations between Cameron, Pryce &		19	<b>Q</b> The security company at Lakeview,	
20	Griffiths with Dalton were conducted with you		20	is there a licensed watch guard agency	
21	and not with Mondesir or Alonzo or the other		21	company?	
22	people, isn't that the fact?		22	<b>A As far as I know.</b>	
23	MR. KELLY: Objection to		23	<b>Q</b> What is the name of it, sir?	
24	form.		24	<b>A Howard Security.</b>	
25	MR. TRAUB: Objection to		25	<b>Q</b> Howard?	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	
1	Dawley	170	1	Dawley	172
2	form.		2	<b>A Howard.</b>	
3	Can you clarify		3	<b>Q</b> Who is the director of it, if you	
4	negotiations?		4	know?	
5	<b>Q</b> All their requests were with you		5	<b>A I don't know.</b>	
6	and not the others?		6	<b>Q</b> Did they obtain this situation by	
7	MR. TRAUB: During the six		7	bid?	
8	month audit and then their		8	<b>A Originally they did.</b>	
9	requests?		9	<b>It was bid under DHCR rules. It</b>	
10	<b>Q</b> Between March and up until today,		10	<b>was advertised. It was approved and they had</b>	
11	isn't it true that all of that was with you?		11	<b>a five year contract.</b>	
12	<b>A Most of them, most of them.</b>		12	<b>Q</b> The five years has expired?	
13	<b>Q</b> So is it fair to say that almost		13	<b>A Yes.</b>	
14	all the inquiries that they made came to you?		14	<b>Q</b> Is there some reason that the	
15	MR. TRAUB: Objection to the		15	contract is not renewed?	
16	form.		16	<b>A The building was in negotiations</b>	
17	<b>A I would think so.</b>		17	<b>to buy out the program. They had a tentative</b>	
18	<b>Q</b> Do you recall an inquiry		18	<b>offer to sell it and the new owner didn't want</b>	
19	concerning a security payroll contract of		19	<b>to have us signing a new five year contract so</b>	
20	\$100,368.00 paid in 2006 under account number		20	<b>we didn't.</b>	
21	6530. Do you recall this inquiry in the		21	<b>Q</b> You had mentioned Seavey buildings	
22	support for the security payroll contract of		22	operating with security companies that don't	
23	\$100,000.00; do you recall that request at		23	have contracts?	
24	all?		24	<b>A I am not sure.</b>	
25	MR. TRAUB: Objection to		25	<b>Q</b> Is that information you can check	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
	800-608-6085			800-608-6085	



<p>1 Dawley 173</p> <p>2 and then supply to us when the transcript is</p> <p>3 returned to you?</p> <p>4 MR. TRAUB: If you can put a</p> <p>5 request in writing to a letter we</p> <p>6 will take it under advisement at</p> <p>7 this time.</p> <p>8 MR. HAYWOODE: I put it here</p> <p>9 on the record and ask that a</p> <p>10 space be left for the production</p> <p>11 of such information if you're of</p> <p>12 mind to produce it at that time.</p> <p>13 MR. TRAUB: I am not going</p> <p>14 to have the burden of reading</p> <p>15 through the record to figure out</p> <p>16 what it is that you want, so</p> <p>17 again if at the end of this you</p> <p>18 want certain documents you can</p> <p>19 put it in a letter to us and we</p> <p>20 will take it under advisement</p> <p>21 that way.</p> <p>22 MR. HAYWOODE: Well, I would</p> <p>23 ask that in reading the</p> <p>24 transcript that you provide it,</p> <p>25 but whatever.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 175</p> <p>2 that question?</p> <p>3 MR. HAYWOODE: I don't want</p> <p>4 to know anything that counsel</p> <p>5 said to you or you said to</p> <p>6 counsel. I just want to know if</p> <p>7 anyone discussed with you the</p> <p>8 fact that these discovery</p> <p>9 requests were made?</p> <p>10 MR. TRAUB: You're saying</p> <p>11 other than counsel?</p> <p>12 Q Just a minute, if anyone discussed</p> <p>13 with you, anyone, that discovery requests were</p> <p>14 made both before Judge Baer and Magistrate</p> <p>15 Francis concerning this information? Did</p> <p>16 anyone discuss that with you before you came</p> <p>17 here today?</p> <p>18 MR. TRAUB: Again I am</p> <p>19 objecting to the form. That's</p> <p>20 not proper and again to the</p> <p>21 extent that your response would</p> <p>22 be response with counsel then</p> <p>23 you're not to answer that</p> <p>24 question even whether or not we</p> <p>25 had the conversation.</p> <p>LEX REPORTING SERVICE 800-608-6085</p>
<p>1 Dawley 174</p> <p>2 MR. TRAUB: I made my</p> <p>3 request on the record.</p> <p>4 (INSERT):</p> <p>5 Q Did it come to your attention a</p> <p>6 request concerning a workers compensation</p> <p>7 policy, which had a bill for \$12,476.03 which</p> <p>8 recited a payment of \$12,476.03 whereas the</p> <p>9 actual bill for the policy was \$9,084.60.</p> <p>10 Do you recall Cameron, Pryce &amp;</p> <p>11 Griffiths raising this question with you?</p> <p>12 A No, I don't.</p> <p>13 Q Did you at any time discuss with</p> <p>14 counsel or anyone else, the discovery requests</p> <p>15 that were made in this action before Judge</p> <p>16 Baer?</p> <p>17 MR. TRAUB: Objection to the</p> <p>18 form as it asks for</p> <p>19 attorney/client privilege</p> <p>20 information, so I am going to</p> <p>21 instruct the witness to the</p> <p>22 extent that your answer calls for</p> <p>23 conversations you had with legal</p> <p>24 counsel or made at the request of</p> <p>25 legal counsel you don't answer</p> <p>LEX REPORTING SERVICE 800-608-6085</p>	<p>1 Dawley 176</p> <p>2 Q Did anyone discuss with you our</p> <p>3 discovery demands and the fact that we were</p> <p>4 looking for support for the claim that</p> <p>5 \$12,476.00 was paid in 2006 when the policy</p> <p>6 recited \$9,000? No one discussed that with</p> <p>7 you, no one approached you to get an answer</p> <p>8 that question?</p> <p>9 MR. TRAUB: Objection to the</p> <p>10 form.</p> <p>11 A I don't remember.</p> <p>12 Q But if they had asked you that's</p> <p>13 information that you could get, is it not?</p> <p>14 A Yes.</p> <p>15 Q Now, let's see with respect to</p> <p>16 building and liability insurance premiums, did</p> <p>17 it come to your attention that there was an</p> <p>18 inquiry concerning whether any excess</p> <p>19 insurance premium payments were returned and</p> <p>20 that they wanted to know the names of the</p> <p>21 brokers involved and to get checks and face</p> <p>22 sheets of policies which allege prepayments</p> <p>23 were made, did that inquiry come to your</p> <p>24 attention at any time?</p> <p>25 A I don't recall, but if they had</p> <p>LEX REPORTING SERVICE 800-608-6085</p>

<p>1 Dawley 177</p> <p>2 <b>asked for any of that information --</b></p> <p>3 <b>Q</b> You could have supplied it?</p> <p>4 <b>A</b> <b>It would have been easily provided</b> <b>at the site. I mean at our office.</b></p> <p>5 <b>Q</b> Further, it's the allegation that</p> <p>6 the general ledger entries are not consistent</p> <p>7 with the document produced in response to that</p> <p>8 particular request.</p> <p>9 Did that come to your attention at</p> <p>10 any time?</p> <p>11 MR. TRAUB: Objection to the</p> <p>12 form.</p> <p>13 MR. KELLY: Join.</p> <p>14 <b>A</b> <b>I don't think the question makes</b> <b>sense as asked, no.</b></p> <p>15 <b>Q</b> You never heard that?</p> <p>16 <b>A</b> <b>Well, I don't know what you're</b> <b>referring to. I mean it doesn't make sense.</b></p> <p>17 <b>Q</b> The statement that the general</p> <p>18 ledger entries were not consistent with</p> <p>19 documents produced, concerning the building</p> <p>20 and liability insurance company policies, that</p> <p>21 was never brought to your attention?</p> <p>22 <b>A</b> <b>That doesn't make sense, because</b> <b>LEX REPORTING SERVICE</b> <b>800-608-6085</b></p>	<p>1 Dawley 179</p> <p>2 MR. TRAUB: Objection to</p> <p>3 form.</p> <p>4 <b>Q</b> Had it ever come to your attention</p> <p>5 that one of the representations made before</p> <p>6 Judge Baer was, "Well, that's information you</p> <p>7 will get on a deposition? Did that come to</p> <p>8 your attention that had been said?</p> <p>9 MR. KELLY: Objection to</p> <p>10 form.</p> <p>11 MR. TRAUB: Again objection</p> <p>12 to form.</p> <p>13 <b>A</b> <b>No.</b></p> <p>14 <b>Q</b> Yet no one ever talked to you</p> <p>15 about any of these requests?</p> <p>16 <b>A</b> <b>No.</b></p> <p>17 MR. KELLY: Objection to</p> <p>18 form.</p> <p>19 MR. TRAUB: Objection to</p> <p>20 form.</p> <p>21 <b>A</b> <b>Not that I remember, no.</b></p> <p>22 MR. TRAUB: Mel, you were</p> <p>23 pointing up and down at the</p> <p>24 request. I just want to state</p> <p>25 Exhibit 8, which previously was</p> <p><b>LEX REPORTING SERVICE</b> <b>800-608-6085</b></p>
<p>1 Dawley 178</p> <p>2 <b>the entries that we have for any payments we</b> <b>had invoices for so I don't know what -- it</b> <b>doesn't make sense.</b></p> <p>3 <b>Q</b> There was a claim that a utility</p> <p>4 deposit was paid for \$4,205.00. Now, all of</p> <p>5 this coming from the same document and</p> <p>6 cancelled checks were requested and not</p> <p>7 produced.</p> <p>8 Did that inquiry ever come to your</p> <p>9 attention?</p> <p>10 MR. TRAUB: Objection to</p> <p>11 form.</p> <p>12 MR. KELLY: Objection to</p> <p>13 form.</p> <p>14 <b>A</b> <b>Well, first if there was payment</b> <b>made for any item there is the cancelled check</b> <b>for it or it wasn't paid.</b></p> <p>15 <b>Q</b> But no one ever said to you that</p> <p>16 either Cameron, Pryce &amp; Griffiths or Mel</p> <p>17 Haywoode were looking for this document and</p> <p>18 had taken the trouble to go to Judge Baer and</p> <p>19 print it out and to say so and to submit it</p> <p>20 again to Judge Francis and to say so, no one</p> <p>21 ever say that to you?</p> <p>22 <b>LEX REPORTING SERVICE</b> <b>800-608-6085</b></p>	<p>1 Dawley 180</p> <p>2 Exhibit 12 at the last</p> <p>3 deposition, contains two sets of</p> <p>4 requests. The first set that was</p> <p>5 actually produced and then</p> <p>6 Exhibit 12 contains items in</p> <p>7 brackets that expound on the</p> <p>8 first request. I just want to</p> <p>9 clarify whether or not you're</p> <p>10 talking about the actual request</p> <p>11 number or the requests that are</p> <p>12 in brackets?</p> <p>13 MR. HAYWOODE: I am talking</p> <p>14 about the requests that are in</p> <p>15 brackets, because the documents</p> <p>16 in the notice to produce in</p> <p>17 interrogatories, a failure to</p> <p>18 respond was served on all parties</p> <p>19 and was produced to Judge Baer</p> <p>20 and was produced to Magistrate</p> <p>21 Francis in consideration. I'm</p> <p>22 talking about the document in the</p> <p>23 form that it presently exists in.</p> <p>24 MR. TRAUB: I just want to</p> <p>25 state on the record, that</p> <p><b>LEX REPORTING SERVICE</b> <b>800-608-6085</b></p>

<p>1 Dawley 181</p> <p>2 Magistrate Francis's order does</p> <p>3 not rule one way or the other if</p> <p>4 you made a request on that and</p> <p>5 Judge Baer, his instructions were</p> <p>6 to the extent that you believe</p> <p>7 there was something that was not</p> <p>8 fully responded to, to put it in</p> <p>9 a letter to Judge Baer, which is</p> <p>10 what that form was for him to</p> <p>11 take under advisement and we have</p> <p>12 not received a ruling on the</p> <p>13 court on that either. Those do</p> <p>14 not constitute, at least in my</p> <p>15 opinion, discovery requests on</p> <p>16 the defendants in this matter,</p> <p>17 the stuff that are in the</p> <p>18 brackets.</p> <p>19 MR. HAYWOODE: But now for</p> <p>20 the record, Darren, you said to</p> <p>21 me that this is information which</p> <p>22 can be produced on deposition.</p> <p>23 So that I presumed that there is</p> <p>24 another witness coming from</p> <p>25 Dalton -- just a minute, who will</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 183</p> <p>2 documents at least from my</p> <p>3 clients or that your questions</p> <p>4 appeared to, for instance, this</p> <p>5 is unclear. Your questions about</p> <p>6 something being unclear or</p> <p>7 nothing is produced in</p> <p>8 explanation. The explanation</p> <p>9 could be garnered through an</p> <p>10 appropriate deposition request</p> <p>11 and as to your request as to</p> <p>12 whether or not any additional</p> <p>13 clients of mine will appear for</p> <p>14 deposition I believe you did</p> <p>15 notice Phyllis, Bob, Avery, Neale</p> <p>16 and I have made them available</p> <p>17 for deposition.</p> <p>18 MR. HAYWOODE: My point is</p> <p>19 that I assume that at some point,</p> <p>20 some of these witnesses are going</p> <p>21 to be shown these inquiries and</p> <p>22 told to either respond to them or</p> <p>23 not. My concern is that we have</p> <p>24 matters going before Judge</p> <p>25 Francis talking about deposition</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 182</p> <p>2 respond to the questions that we</p> <p>3 had at some point.</p> <p>4 MR. TRAUB: Can I see</p> <p>5 Exhibit Number 8 real quick?</p> <p>6 MR. HAYWOODE: (Hanging.)</p> <p>7 MR. TRAUB: For instance, my</p> <p>8 comments some of this stuff could</p> <p>9 be obtained in deposition. For</p> <p>10 instance, in response to Number 5</p> <p>11 you have in brackets, were there</p> <p>12 any excess returns? What are the</p> <p>13 names of the brokers involved?</p> <p>14 The general ledger entries are</p> <p>15 not consistent with documents</p> <p>16 produced in response to this</p> <p>17 request.</p> <p>18 The point of my comments,</p> <p>19 you can get this stuff on</p> <p>20 deposition, was what are the</p> <p>21 names of the broker involved, do</p> <p>22 you remember? Why are the</p> <p>23 general ledgers not consistent?</p> <p>24 So my point was that you had</p> <p>25 either received all of the</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 184</p> <p>2 at a time when there doesn't</p> <p>3 appear to be any indication that</p> <p>4 any effort was expended by anyone</p> <p>5 to respond to the questions that</p> <p>6 we put before both judges.</p> <p>7 MR. TRAUB: That is my</p> <p>8 problem. We went over this at</p> <p>9 the last deposition. Your stuff</p> <p>10 in brackets is not a discovery</p> <p>11 request propounded under the</p> <p>12 federal rules. Your stuff in</p> <p>13 brackets is in response to Judge</p> <p>14 Baer's request to you to give to</p> <p>15 the court what you believe you</p> <p>16 did not obtain in response to the</p> <p>17 discovery.</p> <p>18 MR. HAYWOODE: All right, I</p> <p>19 am just hearing what you're</p> <p>20 saying that somewhere, somehow</p> <p>21 the Court of Darren Traub, which</p> <p>22 is a formidable court, determined</p> <p>23 the application and determined</p> <p>24 that no response should be made</p> <p>25 to those questions. I am being a</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>

1	Dawley	185	1	Dawley	187
2	little factitious.		2	did anyone discuss with you that regarding	
3	MR. TRAUB: What I received		3	Lakeview that there is a note payable to Robin	
4	in the mail from you was a		4	Seavey in the amount of \$29,915.16 and that	
	discovery request similar to		5	Cameron, Pryce & Griffiths had stated that no	
7	Exhibit 8, except that it did not		6	document or support is given for this loan	
8	have the items in brackets and		7	transaction or why it was necessary given the	
9	then in response to your		8	positive cash flow of that development?	
10	statement to Judge Baer that you		9	Did that question ever come to	
11	did not receive any documents Mr.		10	your attention?	
12	Kelly and I stood up and told		11	MR. KELLY: Objection to	
13	Judge Baer that that is not true.		12	form.	
14	We have produced between both of		13	<b>A That particular amount I have</b>	
15	our clients a total of sixteen		14	<b>found out had something to do with a closing</b>	
16	boxes. That was all the		15	<b>or refinancing and that it was monies that</b>	
17	discovery that we had. Then		16	<b>were left after they got through taking care</b>	
18	Judge Baer asked you if you		17	<b>of all the different classifications. That's</b>	
19	contend that you did not get		18	<b>the best I can explain it, because I don't</b>	
20	something in response to		19	<b>have any documentation for that amount. It's</b>	
21	discovery to please put it in a		20	<b>been on books for a long time. I have never</b>	
22	letter.		21	<b>adjusted or changed it.</b>	
23	MR. HAYWOODE: He said make		22	<b>Q Is the note being re-paid to your</b>	
24	a motion.		23	<b>knowledge?</b>	
25	MR. TRAUB: His response at		24	<b>A No, it has not been paid. No</b>	
	that time in the courtroom was		25	<b>money has been paid, no interest has been</b>	
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1	Dawley	186	1	Dawley	188
2	put it in a letter to him and he		2	<b>accrued. No interest, as far as I know, is</b>	
3	will take it under advisement and		3	<b>even on the note and nothing has happened to</b>	
4	that is what we have.		4	<b>it. It's just sitting there.</b>	
5	MR. HAYWOODE: This document		5	<b>Q Would I be correct in presuming</b>	
6	was served on you prior to you		6	<b>that Robert W. Seavey, would have had to have</b>	
7	going to Judge Baer and it was		7	<b>loaned money to Lakeview in order for such a</b>	
8	served on you a second time at		8	<b>note to generate?</b>	
9	the time it was submitted to		9	MR. TRAUB: Objection to the	
10	Magistrate Francis, so that these		10	form.	
11	were served on both counsel in		11	MR. KELLY: Join.	
12	this form indicating these were		12	<b>A There is an indication on the</b>	
13	the additional questions that we		13	<b>books to Rob Seavey in the amount of \$29,000</b>	
14	had.		14	<b>something. To have a payment for that this</b>	
15	MR. TRAUB: But in response		15	<b>has to be some type of obligation. Whether</b>	
16	to Judge Baer's request for you		16	<b>that obligation was money he loaned, services</b>	
17	to show him what you contend you		17	<b>he did or a myriad of other things, which I</b>	
18	didn't receive that's not		18	<b>can't even begin to think of, is how it got</b>	
19	additional discovery requests.		19	<b>there. It doesn't necessarily have to be</b>	
20	At least we are not taking it as		20	<b>because somebody loaned you the money. It</b>	
21	such. If you want to put them in		21	<b>could have been for services rendered.</b>	
22	additional discovery form we will		22	<b>Q Would the corporation, to your</b>	
23	be more than happy to respond to		23	<b>knowledge, have written a note to Robert</b>	
24	them.		24	<b>Seavey because of service that he rendered?</b>	
25	<b>Q With regard to these questions,</b>		25	MR. TRAUB: Objection to	
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1	Dawley	189	1	Dawley	191
2	form.		2	<b>A I am assuming that they were, yes.</b>	
3	MR. KELLY: Objection.		3	<b>Q</b> I am going to show you again	
4	<b>A I don't know.</b>		4	Plaintiff's Exhibit 4 from the examination of	
5	<b>I am saying it could have come up</b>		5	February 3rd.	
6	<b>for a myriad of different reasons.</b>		6	(A copy of the general	
7	MR. TRAUB: I don't want you		7	ledger expense sheet was	
8	to guess.		8	marked as Plaintiff's	
9	<b>A I don't know.</b>		9	Exhibit 9, for	
10	MR. TRAUB: I am entitled to		10	identification, as of this	
11	tell the witness not to guess.		11	date.)	
12	You know that I am.		12	<b>Q</b> I direct your attention to Exhibit	
13	MR. HAYWOODE: You can say		13	9.	
14	anything to any witness, tell him		14	Is that a copy of the general	
15	anything. You can tell him don't		15	ledger expense sheet done by Dalton	
16	slide when you're coming into		16	Management?	
17	third base too, I don't know, but		17	<b>A Yes, it is.</b>	
18	not during the deposition as I		18	<b>Q</b> Looking at that sheet, sir, does	
19	understand it.		19	it show the amounts of money paid to Marks,	
20	MR. TRAUB: I can instruct		20	Paneth & Shron in 2006?	
21	my witness not to guess and I		21	<b>A Yes, it does.</b>	
22	stand on my objection on the		22	<b>Q</b> How much is that?	
23	record and if you object -- you		23	<b>A Total is \$108,525.45.</b>	
24	can keep laughing at me just like		24	<b>Q</b> That's the ledger that you	
25	you've been laughing at me all		25	generated and submitted to Marks, Paneth &	
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	800-608-6085			800-608-6085	
1	Dawley	190	1	Dawley	192
2	day.		2	Shron for their audit, is that correct?	
3	MR. HAYWOODE: Since I met		3	<b>A That would have been, yes.</b>	
4	you I have always said I am		4	<b>Q</b> Were there adjustment journal	
5	impressed by you. I like you		5	entries made in the final statement, in the	
6	guys. You're a fine lawyer. If		6	financial statement with regard to that money?	
7	I'm laughing or something like		7	MR. TRAUB: Objection to	
8	that, believe me, it's not in any		8	form.	
9	kind of derision of you, because		9	<b>A Without seeing the rest of the</b>	
10	I am most impressed by the		10	<b>financial information I can't tell you.</b>	
11	quality and the demeanor of all		11	MR. HAYWOODE: I ask you to	
12	counsel in this action so far.		12	mark this as Plaintiff's Exhibit	
13	So I am not being derisive. I am		13	10.	
14	not being critical and I know of		14	(One page of journal entries	
15	no reason why I should be		15	for the fiscal year ending	
16	critical of either of you guys.		16	12/31/2006 was marked as	
17	Let's get that straight.		17	Plaintiff's Exhibit 10, for	
18	<b>Q</b> The next question the 2006		18	identification, as of this	
19	financial statement you had stated \$34,000.00		19	date.)	
20	was paid to the auditors, Mark Paneth and		20	<b>Q</b> Would you take a look at	
21	Shron that fiscal year when in actuality it		21	Plaintiff's 10 and tell us what that document	
22	was \$180,000. We mentioned this and the		22	is.	
23	question was why. I recall that you indicated		23	<b>A This one page of journal entries</b>	
24	that there were other services performed		24	<b>for the fiscal year ending -- calendar year</b>	
25	previously, is that correct?		25	<b>ending 12/31/2006.</b>	
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1	Dawley	193	1	Dawley	195
2	Q	Who is the document generated by?	2	<b>you told me to recite and I don't know what</b>	
3	A	<b>Which one?</b>	3	<b>else you want to know.</b>	
4	Q	Ten.	4	Q	In the financial statement, is
5	A	<b>That's the adjusting journal</b>	5	there any comments in there which mention the	
6	<b>entries. They were done by Marks, Paneth &amp;</b>		6	\$34,000.00?	
7	<b>Shron.</b>		7	MR. KELLY: Objection to	
8	Q	I want you to compare the general	8	form.	
9	ledger recommendations from Dalton, which		9	A	<b>Well, you said financial</b>
10	listed the accounting fees paid to Marks,		10	<b>statement?</b>	
11	Paneth & Shron as \$108,000.00 and compare the		11	Q	Yes, is there any?
12	figure that's contained in the financial		12	A	<b>These aren't financial statements.</b>
13	statement generated by Marks, Paneth & Shron		13	MR. TRAUB: This item being	
14	as to what they received?		14	Exhibit 10.	
15	MR. KELLY: Objection to		15	A	<b>There is nothing here that shows</b>
16	form.		16	<b>what the audit fee is.</b>	
17	A	<b>This isn't all the journal</b>	17	Q	Would that be shown someplace
18	<b>entries. I don't know if there were anymore</b>		18	else?	
19	<b>journal entries that were made in addition to</b>		19	A	<b>Well, this is the total cash</b>
20	<b>this one, but there is one journal entry that</b>		20	<b>disbursements that were made.</b>	
21	<b>reclassified fees \$82,909.00 from account 6220</b>		21	Q	That's in the general ledger?
22	<b>to account 6204.</b>		22	MR. TRAUB: For the record,	
23	Q	What is account 6204?	23	you're pointing at Exhibit 9 now?	
24	A	<b>Management consulting.</b>	24	MR. HAYWOODE: Indicating	
25	Q	It's fair to say that what you	25	Exhibit 9.	
	LEX REPORTING SERVICE			LEX REPORTING SERVICE	
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1	Dawley	194	1	Dawley	196
2	just told me is that a journal entry.		2	Q	Is it fair to say that Dalton said
3	adjustment was made, which put at least		3	that Marks, Paneth & Shron got \$108,000.00 in	
4	\$82,000.00 of this money into another		4	2006 and that Marks, Paneth & Shron did a	
5	category, is that correct?		5	journal adjustment to say something else?	
6	MR. TRAUB: Objection to		6	MR. KELLY: Objection to	
7	form.		7	form.	
8	MR. KELLY: Objection to		8	MR. TRAUB: Objection to	
9	form.		9	form.	
10	A	<b>It reclassified \$82,909.00 from</b>	10	Would that be fair to say.	
11	<b>accounting to management consultant.</b>		11	A	<b>What the entry does is it</b>
12	Q	On Exhibit 10 does it list what	12	<b>reclassified.</b>	
13	was paid to Marks, Paneth & Shron as auditing		13	Q	\$82,000.00?
14	fees?		14	A	<b>Right.</b>
15	A	<b>No.</b>	15	Q	What does it do with the remaining
16	Q	So that no where on Exhibit 10	16	\$34,000.00, if anything?	
17	does it show that Marks, Paneth & Shron		17	A	<b>If you read the captions on the</b>
18	received auditing fees?		18	<b>general ledger under the caption accounting</b>	
19	A	<b>Exhibit 10 is a journal entry. It</b>	19	<b>you will see that expenditures were for tax</b>	
20	<b>says here journal entry number 8.</b>		20	<b>analysis, tax preparation, IRS tax examination</b>	
21	Q	I am sorry, when you say it is	21	<b>and then I have to various, which I'd have to</b>	
22	journal entry number 8 what are you		22	<b>look at invoice to see what they were for.</b>	
23	indicating, sir?		23	Q	How much money is covered by the
24	A	<b>This is journal entry number 8.</b>	24	various?	
25	<b>This is part of journal entry number 8 that</b>		25	A	<b>About \$24,000.00.</b>
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<p>1 Dawley 197</p> <p>2 <b>Q</b> There was a closing that took</p> <p>3 place in 2004 and a sum of \$322,000.00 was</p> <p>4 transferred from Church Homes, as I recall, to</p> <p>5 account number 2.</p> <p>6 <b>A</b> Wait, wait, wait I am confused.</p> <p>7 <b>Q</b> Do you have any recollection of</p> <p>8 that?</p> <p>9 <b>A</b> Wait, wait, this is this is Fifth</p> <p>10 and 106th.</p> <p>11 <b>Q</b> Okay.</p> <p>12 <b>A</b> You're done with this?</p> <p>13 <b>Q</b> Yes.</p> <p>14 This \$82,000.00 what is the</p> <p>15 historiography or the anthropology if you will</p> <p>16 of that money, where did it come from?</p> <p>17 <b>A</b> Wait, wait.</p> <p>18 <b>Q</b> This \$82,000.00 consultant fees</p> <p>19 and what else; various and what else?</p> <p>20 MR. TRAUB: Objection to the</p> <p>21 form.</p> <p>22 MR. KELLY: Join.</p> <p>23 <b>A</b> It says IRS tax examination, tax</p> <p>24 preparation and tax analysis.</p> <p>25 <b>Q</b> Does it say when those services</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 199</p> <p>2 <b>statement, but I can't tell what year.</b></p> <p>3 <b>Q</b> Who is it generated by?</p> <p>4 <b>A</b> This is generated by the Marks,</p> <p>5 Paneth &amp; Shron.</p> <p>6 <b>Q</b> Is it fair to say that document</p> <p>7 suggests that the total value or amount of</p> <p>8 money that was paid to Marks, Paneth &amp; Shron</p> <p>9 in 2006?</p> <p>10 MR. TRAUB: Objection to</p> <p>11 form.</p> <p>12 <b>Q</b> It says Marks, Paneth &amp; Shron,</p> <p>13 LLP. It says retainer and then under the</p> <p>14 classification of accounting it says</p> <p>15 \$34,155.00.</p> <p>16 Was that document produced for</p> <p>17 DHCR?</p> <p>18 <b>A</b> Yes.</p> <p>19 <b>Q</b> Does HUD get involved in any way</p> <p>20 in that document?</p> <p>21 <b>A</b> I don't think HUD gets a copy.</p> <p>22 They might get one. We send them to about</p> <p>23 four or five different agencies.</p> <p>24 <b>Q</b> How do you send it?</p> <p>25 <b>A</b> By mail.</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>
<p>1 Dawley 198</p> <p>2 were provided?</p> <p>3 <b>A</b> The tax analysis was for years</p> <p>4 2001 to 2004. Tax preparation was 2003 and</p> <p>5 the IRS tax examination doesn't have a year.</p> <p>6 We'd have to look at the specific invoices.</p> <p>7 <b>Q</b> There is no chance that the tax</p> <p>8 analysis referred to in that money, could have</p> <p>9 been performed by Grenadier Management or</p> <p>10 Marion Scott or anybody else, is there?</p> <p>11 <b>A</b> Probably not.</p> <p>12 Not the New York Yankees or the</p> <p>13 Boston Red Sox or Edmonds.</p> <p>14 <b>Q</b> Touché?</p> <p>15 MR. HAYWOODE: Please mark</p> <p>16 this as Plaintiff's Exhibit 11.</p> <p>17 (An annual financial</p> <p>18 statement was marked as</p> <p>19 Plaintiff's Exhibit 11, for</p> <p>20 identification, as of this</p> <p>21 date.)</p> <p>22 <b>Q</b> I am going to ask you, sir, if you</p> <p>23 recognize what that document is?</p> <p>24 <b>A</b> Let's see it's Page 26 to 27. It</p> <p>25 appears to be either the annual financial</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>	<p>1 Dawley 200</p> <p>2 <b>Q</b> You do that in all instances, is</p> <p>3 that correct?</p> <p>4 <b>A</b> Yes.</p> <p>5 <b>Q</b> Is there a reason why that form</p> <p>6 doesn't include the other \$82,000.00</p> <p>7 consultant fees?</p> <p>8 MR. KELLY: Objection to</p> <p>9 form.</p> <p>10 <b>A</b> The reason why it doesn't?</p> <p>11 <b>Q</b> Yes.</p> <p>12 <b>A</b> I have no -- no, I don't know. I</p> <p>13 have no idea.</p> <p>14 <b>Q</b> Who made the determination to</p> <p>15 reduce the amount of monies reported in</p> <p>16 Dalton's general ledger as \$108,000.00 to</p> <p>17 \$34,000.00 in the financial statement, who</p> <p>18 made that determination?</p> <p>19 MR. TRAUB: Objection to the</p> <p>20 form.</p> <p>21 MR. KELLY: Objection to</p> <p>22 form.</p> <p>23 <b>A</b> The journal entry that you pointed</p> <p>24 out in Exhibit 10, which we classified</p> <p>25 \$82,000.00, was produced by Marks, Paneth &amp;</p> <p>LEX REPORTING SERVICE</p> <p>800-608-6085</p>